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FILED

2008 AUG -7 AM 10:21

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY CUH DEPUTY

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

11 STEVEN SULLIVAN, an individual;
12 SULLIVAN INTERNATIONAL
13 GROUP, INC., a California
corporation,

14 Plaintiffs,

15 v.

16 TETRA TECH, INC., a Delaware
17 corporation; TETRA TECH EMI,
18 INC., a Delaware corporation; JOHN
19 TEEL, an individual; DANIEL
20 BATRACK, an individual; RANDY
FETTERS, an individual; MARK
WALSH, an individual; MICHAEL
WANTA, an individual; EDWARD
SUSSENGUTH, an individual; and
DOES 1-50, inclusive,

21 Defendants.

CASE NO 08 CV 1433 JM LSP

NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1441

[FEDERAL QUESTION]

[San Diego County Superior Court Case
No. 37-2008-00084804-CU-BT-CTL]

CR

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1331, 1441, and
3 1446, Defendants Tetra Tech, Inc., Tetra Tech EMI, Inc., Daniel Batrack, Randy
4 Fetters, Edward Sussenguth, John Teel, Mark Walsh, and Michael Wanta
5 ("Defendants"), by and through their undersigned attorneys, McDermott Will &
6 Emery LLP, hereby remove the above-captioned action entitled Steven Sullivan, et
7 al., v. Tetra Tech, Inc., et al., Case No. 37-2008-00084804-CU-BT-CTL, from the
8 Superior Court of the State of California, County of San Diego, to the United States
9 District Court for the Southern District of California, on the following grounds:

10 1. On July 8, 2008, Plaintiffs Steven Sullivan and Sullivan International
11 Group, Inc. ("Plaintiffs") filed a civil action, labeled "First Amended Complaint,"
12 in the Superior Court of the State of California, County of San Diego, Case No. 37-
13 2008-00084804-CU-BT-CTL, entitled Steven Sullivan, et al., v. Tetra Tech, Inc., et
14 al. (the "State Court Action"). Plaintiffs served Defendants Tetra Tech, Inc., Tetra
15 Tech EMI, Inc., Daniel Batrack, Edward Sussenguth, and Michael Wanta with the
16 Summons and First Amended Complaint on July 8, 2008. Defendants' counsel
17 agreed to accept service on behalf of Defendants Randy Fetters, John Teel, and
18 Mark Walsh on July 14, 2008. A true and correct copy of the Summons and First
19 Amended Complaint in the State Court Action that was served on Defendants is
20 attached hereto as Exhibit A.

21 2. As set forth more fully below, the State Court Action is a civil action
22 over which this Court would have original jurisdiction under 28 U.S.C. § 1331 and
23 which may be removed to this Court pursuant to 28 U.S.C. § 1441(b), in that it is a
24 "civil action of which the district courts have original jurisdiction founded on a
25 claim or right arising under the Constitution, treaties or laws of the United States."
26 28 U.S.C. § 1441(b).

27 3. This Notice of Removal is timely under 28 U.S.C. § 1446 because it is
28 filed within thirty days from the date on which Defendants Tetra Tech, Inc., Tetra

1 Tech EMI, Inc., Daniel Batrack, Edward Sussenguth, and Michael Wanta were
2 served with a copy of the First Amended Complaint and corresponding summons
3 (July 8, 2008). A true and correct copy of Plaintiffs' Proof of Service of the State
4 Court Action is attached hereto as Exhibit B. No defendant in the State Court
5 Action was served with any pleading prior to the Plaintiffs filing their First
6 Amended Complaint on July 8, 2008.

7 4. Written notice of the filing of this Notice of Removal will be given to
8 Plaintiffs promptly after the filing of the Notice of Removal as required by 28
9 U.S.C. § 1446(d). In addition, as required by 28 U.S.C. § 1446(d), a copy of this
10 Notice of Removal will be filed promptly in the State Court Action with the Clerk
11 of the Superior Court, County of San Diego, after the filing of the Notice of
12 Removal.

13 **JURISDICTIONAL GROUNDS**

14 **Summary of Essential Allegations**

15 5. The State Court Action is brought on behalf of Steven Sullivan and his
16 company, Sullivan International Group, Inc. ("Sullivan Inc."), against Tetra Tech,
17 Inc., Tetra Tech EMI, Inc. ("TTEMI"), which is a wholly-owned subsidiary of
18 Tetra Tech, Inc., and several current and former employees and officers of those
19 companies. (Ex. A.)

20 6. As summarized in the First Amended Complaint ("Complaint"), the
21 State Court Action "seeks redress for injuries inflicted on the plaintiffs . . . [when
22 TTEMI] undertook to abuse the [U.S.] Small Business Administration's Mentor-
23 Protégé Program and small business contract award procedures . . . in violation of
24 federal regulations governing the award and performance of those contracts." (Ex
25 A, ¶ 1.)

26 7. TTEMI is a government contractor. (Ex A, ¶ 1.) Sullivan Inc. is a
27 small contractor firm that is alleged to be certified as a "Small Disadvantaged
28

1 Business” by the U.S. Small Business Administration (“SBA”) pursuant to the U.S.
2 Small Business Act. (Ex. A, ¶ 21.)

3 8. The Complaint alleges that to provide Sullivan Inc. with the
4 opportunity to obtain and complete federal government contracts, TTEMI and
5 Sullivan Inc. participated in the SBA’s “Mentor-Protégé” Program, which is a
6 federal program created, administered, and regulated by the SBA pursuant to the
7 Small Business Act. (Ex. A, ¶¶ 21-22.)

8 9. Plaintiffs allege that pursuant to this federal program, TTEMI and
9 Sullivan Inc. entered into an SBA Mentor-Protégé Agreement in February 2003.
10 (Ex. A, ¶ 27.) The Complaint also alleges that pursuant to the agreement, TTEMI
11 and Sullivan Inc. also entered into an SBA Joint Venture Agreement in May 2003.
12 (Ex. A, ¶ 33.) These agreements are created and governed by federal regulations
13 promulgated by the SBA under the Small Business Act. (Ex. A, ¶¶ 38 & 40.)

14 10. As set forth above, the State Court Action is based on Defendants’
15 alleged violations of SBA regulations and duties arising under the SBA-regulated
16 Mentor-Protégé Program and the agreements the parties entered into pursuant to
17 that federal program. (Ex. A, ¶ 1.)

18 11. Specifically, the Complaint alleges that Defendants violated numerous
19 SBA regulations, including the prohibitions against a mentor: (i) having more than
20 one protégé at a time (13 C.F.R. § 124.520(b)(2)); (ii) competing with its protégé
21 (13 C.F.R. § 124.520(b)); (iii) performing the vast majority of the work and
22 collecting the majority of the revenue (13 C.F.R. §§ 124.510, 124.513, & 125.6);
23 and (iv) using its protégé only for its small business status (13 C.F.R. §
24 124.513(a)(2)). (Ex. A, ¶¶ 38-42.)

25 12. In addition, Plaintiffs allege that TTEMI defrauded the SBA regarding
26 TTEMI’s compliance with SBA regulations: “TTEMI misled SBA personnel about
27 its compliance with applicable regulations, failing to disclose its competitive efforts
28 against its protégé Sullivan [Inc.]. As a result of TTEMI’s concealment of truthful

1 information, SBA personnel were duped into believing that TTEMI was operating
2 in compliance with its duties.” (Ex. A, ¶ 48.)

3 13. As a general matter, Plaintiffs incorporate all of the above-alleged
4 violations of SBA regulations into each of their eleven state law causes of action.
5 (See Ex. A, ¶¶ 98, 104, 111, 117, 124, 129, 136, 140, 153, 158, & 163.)

6 14. As a specific matter, several of Plaintiffs’ causes of action are directly
7 based on Defendants’ alleged violations of SBA regulations. For example,
8 Plaintiffs base their unfair competition claim (first cause of action) on two theories:
9 (1) that Defendants acted “unlawfully”; and (2) that Defendants acted
10 “fraudulently.” (Ex. A, ¶¶ 100 & 102.) Both theories are based on alleged
11 violations of SBA regulations.

12 15. With respect to Defendants’ alleged “unlawful” conduct, Plaintiffs
13 allege the following:

14 100. By perpetrating the conduct alleged herein, defendants acted
15 unlawfully by, among other things:

16 a. Competing against Sullivan [Inc.] using multiple 8(a)
17 small business protégé firms, in violation of 13 C.F.R. § 124.520(b);

18 b. Procuring and performing 8(a) and small business set
19 aside government contracts with shell companies controlled by
20 TTEMI, and by performing a vast majority of the work and reaping the
21 vast majority of the revenues under those contracts, in violation of 13
22 C.F.R. §§ 124.510, 124.513, 124.520 and 125.6;

23 c. Using [alleged competing protégés] in join ventures,
24 where TTEMI received the vast majority of revenues and net profits,
25 and where [such protégés] brought little, if anything, to the joint
26 venture relationships other than its 8(a) status, which is prohibited by
27 13 C.F.R. §§ 124.513(a)(2) and 124.520(e)(2).

28 (Ex. A, ¶ 100(a)-(c) (emphasis supplied).)

1 16. With respect to Defendants' alleged "fraudulent" conduct, Plaintiffs
2 allege the following:

3 102. By perpetrating the conduct alleged herein, defendants acted
4 fraudulently by, among other things:

5 [¶]

6 b. Concealing the nature and extent of TTEMI's mentor-
7 protégé relationships with other firms;

8 [¶, ¶]

9 f. Affirmatively misrepresenting to Sullivan [Inc.] in
10 September, 2006 that its only mentor-protégé relationship was with
11 Sullivan [Inc.];

12 [¶, ¶]

13 i. Concealing Defendants' efforts to obtain financing for [an
14 alleged competing protégé] from Home Systems of America in order
15 to help [that protégé] and TTEMI win [a government] contract;

16 j. Concealing Defendants' true objective of making small
17 business government contractors pass-through agents for TTEMI to
18 obtain government contracts it would not otherwise obtain.

19 (Ex. A, ¶ 102(b), (f), (i), & (j) (emphasis supplied).) As set forth earlier, each of
20 these purported instances of fraud are alleged to arise out of obligations imposed by
21 SBA regulations. (*See, e.g.*, Ex. A, ¶¶ 38-42.)

22 17. Plaintiffs' breach of contract claim (eighth cause of action) is based on
23 the breach of the terms contained in the SBA Mentor-Protégé Agreement. (Ex. A,
24 ¶¶ 141-149.) Specifically, Plaintiffs allege that TTEMI failed to adequately mentor
25 Sullivan Inc. as a protégé in violation of the SBA Mentor-Protégé Agreement and
26 the Mentor-Protégé program generally. (*See* Ex. A, ¶ 146 ("TTEMI materially
27 breached the SBA Mentor-Protégé Agreement, by . . . failing to effectively assist
28 Sullivan [Inc.] in preparing contract bids; . . . failing to provide work and training to

1 expand Sullivan [Inc.]’s capabilities in project management; and, failing to train
2 Sullivan [Inc.] in the use of cost controls and proper sequence of project tasks.”.)

3 18. Similarly, Plaintiffs’ fraud, concealment, and negligent
4 misrepresentation causes of action are based on Defendants’ alleged failure to
5 disclose their purported violations of SBA regulations. (Ex. A, ¶¶ 125, 130, &
6 137.) For example, Plaintiffs base their fraud claim (fifth cause of action) on the
7 allegation that Defendants misrepresented “That other than Sullivan, TTEMI had no
8 other mentor-protégé relationships.” (Ex. A, ¶ 125(a); *compare* Ex. A, ¶ 38 (“The
9 federal regulation governing mentor-protégé relationships, 13 C.F.R. §
10 124.520(b)(2), generally prohibits mentors from having more than one protégé at a
11 time.”).) Plaintiffs’ negligent misrepresentation claim (seventh cause of action) is
12 based on the same purported misstatements. (*See* Ex. A, ¶ 137.)

13 19. Likewise, Plaintiffs base their concealment claim (sixth cause of
14 action) on the allegation that Defendants concealed “Defendants’ formation of
15 mentor-protégé relationships with businesses in direct competition with Sullivan.”
16 (Ex. A, ¶ 130(e); *compare* Ex. A, ¶ 39 (“TTEMI competed against Sullivan for
17 numerous contract opportunities with its other protégés during the time that it was
18 obligated, under 13 C.F.R. § 124.520(b)(2), . . . to refrain from competing against
19 Sullivan for those opportunities.”).)

20 **Federal Question Jurisdiction**

21 20. A civil action filed in state court can be removed to federal court if the
22 case could have been originally filed in federal court under federal question
23 jurisdiction. 28 U.S.C. § 1441(b). Removal under 28 U.S.C. § 1441(b) requires
24 that the action contain “a claim or right arising under the Constitution, treaties or
25 laws of the United States.”

26 21. “To determine whether the claim arises under federal law, [courts]
27 examine the ‘well pleaded’ allegations of the complaint and ignore potential
28 defenses.” *Beneficial Nat’l Bank v. Anderson*, 539 U.S. 1, 6 (2003); *see also Ansley*

1 *v. Ameriquest Mortg. Co.*, 340 F.3d 858, 861 (9th Cir. 2003) (“For removal to be
2 appropriate under the well-pleaded complaint rule, a federal question must appear
3 on the face of a properly pleaded complaint.”).

4 22. Under the well-pleaded complaint rule, state law claims can be
5 removed to federal court if they “necessarily raise a stated federal issue, actually
6 disputed and substantial, which a federal forum may entertain without disturbing
7 any congressionally approved balance of federal and state judicial responsibilities.”
8 *Grable & Sons Metal Prods. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 314 (2005); *see*
9 *also Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 27-28
10 (1983) (holding that removal can be premised on the notion “that the plaintiff’s
11 right to relief necessarily depends on resolution of a substantial question of federal
12 law”); *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804, 808-809
13 (1986) (“a case may arise under federal law ‘where the vindication of a right under
14 state law necessarily turned on some construction of federal law’.”) (quoting
15 *Franchise Tax Bd.*, 463 U.S. at 9).

16 23. As the Supreme Court explained in *Grable*, the rule “captures the
17 commonsense notion that a federal court ought to be able to hear claims recognized
18 under state law that nonetheless turn on substantial questions of federal law, and
19 thus justify resort to the experience, solicitude, and hope of uniformity that a federal
20 forum offers on federal issues.” 545 U.S. at 312.

21 **The SBA’s Mentor-Protégé Program**

22 24. The SBA’s Mentor-Protégé Program is “designed to encourage
23 approved mentors to provide various forms of assistance to eligible Participants.”
24 13 C.F.R. § 124.520(a) (2004).

25 25. To qualify as a mentor under the program, a company must
26 demonstrate that it meets several criteria, including that it “[p]ossesses good
27 character.” 13 C.F.R. § 124.520(b)(1)(ii).
28

1 26. SBA regulations state that “[g]enerally, a mentor will have no more
2 than one protégé at a time.” 13 C.F.R. § 124.520(b)(2). The SBA “may authorize a
3 concern to mentor more than one protégé at a time where the concern can
4 demonstrate that the additional mentor/protégé relationship will not adversely affect
5 the development of either protégé firm (e.g., the second firm cannot be a competitor
6 of the first firm).” *Id.*

7 27. The Mentor-Protégé Program also allows mentors and protégés to
8 form joint ventures for any government procurement. 13 C.F.R. § 124.520(d).

9 28. SBA regulations require that mentors and protégés enter into a written
10 agreement. 13 C.F.R. § 124.520(e). The agreement is required to contain certain
11 terms (e.g. the relationship must last at least one year, the parties must be able to
12 terminate the agreement on 30 days notice). *Id.* § 124.520(e)(1) & (3).

13 29. In addition, the mentor-protégé agreement must be approved by the
14 SBA and the relationship must be reviewed annually. 13 C.F.R. § 124.520(e)(2) &
15 (4)-(5). The SBA’s annual review includes an examination of whether the mentor
16 “has not provided the assistance set forth in the mentor/protégé agreement or that
17 the assistance has not resulted in any material benefits or developmental gains to
18 the protégé.” *Id.* § 124.520(f)(3).

19 **The State Court Action Confers Federal Question Jurisdiction**

20 30. The gravamen of the wrongdoing asserted in the State Court Action is
21 Defendants’ alleged violations of SBA regulations and duties arising under the
22 SBA-regulated Mentor-Protégé Program and the agreements the parties entered into
23 pursuant to that federal program. (Ex. A, ¶ 1.) More specifically, Plaintiffs’
24 grievance against Defendants is mainly twofold: (1) that TTEMI did not properly
25 mentor Sullivan Inc. as a protégé according to SBA regulations and contractual
26 terms dictated by SBA regulations and approved by the SBA; and (2) that TTEMI
27 illegally mentored other protégés, concealed this fact from Plaintiffs, and defrauded
28

1 the SBA regarding its compliance with applicable regulations. (Ex. A, ¶¶ 38-42, &
2 48.)

3 31. Although the State Court Action does not affirmatively plead a federal
4 right of action, it “necessarily raise[s] a stated federal issue, actually disputed and
5 substantial, which a federal forum may entertain without disturbing any
6 congressionally approved balance of federal and state judicial responsibilities.”
7 *Grable*, 545 U.S. at 314.

8 32. The State Court Action necessarily raises several disputed and
9 substantial federal legal issues.

10 33. Specifically, the Complaint raises the issue of whether TTEMI
11 violated SBA regulations. (*See* Ex. A, ¶¶ 38-42 (alleging violations of prohibitions
12 against a mentor: (i) having more than one protégé at a time (13 C.F.R. §
13 124.520(b)(2)); (ii) competing with its protégé (13 C.F.R. § 124.520(b)); (iii)
14 performing the vast majority of the work and collecting the majority of the revenue
15 (13 C.F.R. §§ 124.510, 124.513, & 125.6); and (iv) using its protégé only for its
16 small business status (13 C.F.R. § 124.513(a)(2))).)

17 34. In addition, the Complaint also raises the issue of whether TTEMI
18 adequately failed to mentor Sullivan Inc. as a protégé in violation of the SBA
19 Mentor-Protégé Agreement and the Mentor-Protégé program generally. (*See, e.g.*,
20 Ex. A, ¶ 146 (“TTEMI materially breached the SBA Mentor-Protégé Agreement,
21 by . . . failing to effectively assist Sullivan [Inc.] in preparing contract bids; . . .
22 failing to provide work and training to expand Sullivan [Inc.]’s capabilities in
23 project management; and, failing to train Sullivan [Inc.] in the use of cost controls
24 and proper sequence of project tasks.”).)

25 35. Each of these alleged violations of SBA regulations (or obligations
26 arising out of the SBA’s mentor-protégé regulatory scheme) form the basis for
27 Plaintiffs’ unfair competition, breach of contract, and fraud-based claims against
28

1 Defendants. (See Ex A, ¶¶ 1, 38-42, 48, 98, 100, 102, 104, 111, 117, 124, 125, 130,
2 129, 136, 137, 140, 146, 153, 158, & 163.)

3 36. Therefore, the scope of TTEMI's statutory, contractual, and tort duties
4 to Plaintiffs requires the Court to examine and interpret federal law. See *Franchise*
5 *Tax Board*, 463 U.S. at 9 (state law claims may be removable "where the
6 vindication of a right under state law necessarily turn[s] on some construction of
7 federal law"); *Finisar Corp. v. United States Bank Trust Nat'l Ass'n*, No. 07-4052,
8 2007 U.S. Dist. LEXIS 93637, at *7 (N.D. Cal. Dec. 7, 2007) (state law breach of
9 contract claim incorporating provisions of the Securities Exchange Act and the
10 Trust Indenture Act removable because "determining the scope of [plaintiff's] duty
11 requires the Court to examine and interpret federal law."); *California ex rel.*
12 *Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 840-841 (9th Cir. 2004) (California unfair
13 competition claim based on defendants' failure to comply with a tariff filed
14 pursuant to the Federal Power Act removable because the viability of the claim
15 depended on a violation of the tariff); *Havel v. SunAmerica Secs., Inc.*, No. 06-
16 4543, 2006 U.S. Dist. LEXIS 77244, at *8-9 (N.D. Cal. Oct. 11, 2006) (California
17 unfair competition claim based on violation of duties imposed by the Fair Labor
18 Standards Act to pay overtime compensation removable because conduct was
19 alleged to be " 'unlawful' solely because it constituted a violation of the FLSA").

20 37. In addition, the State Court Action also implicates other substantial
21 federal issues that justify "the experience, solicitude, and hope of uniformity that a
22 federal forum offers on federal issues." *Grable*, 545 U.S. at 312; see also *In re NSA*
23 *Telcomms. Records Order Litig.*, 483 F. Supp. 2d 934, 943 (N.D. Cal. 2007) (state
24 law claims seeking to enjoin defendants' alleged disclosure to the National Security
25 Agency of telephone records of its California residential customers were removable
26 because the claims involved the application of the state secrets privilege).

27 38. The allegations in the Complaint implicitly question the propriety of
28 actions taken by the SBA. Specifically, the allegation that TTEMI illegally

1 mentored other protégés will necessarily require an examination of whether the
2 SBA properly approved TTEMI's other alleged mentor-protégé relationships under
3 SBA guidelines (*see* 13 C.F.R. § 124.520(b)(2)). Similarly, the allegation that
4 TTEMI failed to adequately mentor Plaintiffs as a protégé will necessarily require
5 an examination of whether the SBA properly reviewed the efficacy of TTEMI's
6 mentorship pursuant to its mandatory annual review process (*see* 13 C.F.R. §
7 124.520(f)(3)). Resolving these issues will require the application of federal
8 administrative law and may raise liability issues on behalf of the SBA under
9 applicable federal statutes, such as the Federal Tort Claims Act.

10 WHEREFORE, the above action now pending in the Superior Court of the
11 State of California, County of San Diego, Case No. 37-2008-00084804-CU-BT-
12 CTL, is hereby removed from said state court to this Court. Defendants pray that:
13 (1) this Court proceed in this action pursuant to 28 U.S.C. § 1447, as if this action
14 had been originally filed in this Court; and (2) further proceedings in the state court
15 action be stayed in all respects.

16 Dated: August 6, 2008

McDERMOTT WILL & EMERY LLP
JAMES L. SANDERS
GREGORY R. JONES

17
18
19
20 By: 

Gregory R. Jones
Attorneys for Defendants

SUMMONS ON FIRST AMENDED COMPLAINT

(CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

TETRA TECH, INC., a Delaware corporation; TETRA TECH EMI, INC., a Delaware corporation; JOHN TEEL, an individual; DANIEL BATRACK, an individual; RANDY FETTERS, an individual; MARK WALSH, an individual; MICHAEL WANTA, an individual; EDWARD SUSSENGUTH, an individual; and DOES 1-50, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

STEVEN SULLIVAN, an individual; SULLIVAN INTERNATIONAL GROUP, INC., a California corporation

FOR COURT USE ONLY
(SOLO PARA USAR LA CORTE)
CIVIL BUSINESS OFFICE 9
CENTRAL DIVISION

2008 JUL -8 A 11:42

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
330 West Broadway

San Diego, California 92101
Central

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Kenneth M. Fitzgerald (SBN 142505)

(619) 236-1234 (619) 696-7419

LATHAM & WATKINS LLP

600 West Broadway, Suite 1800

San Diego, California 92101

DATE:

(Fecha) JUL 8 2008

Clerk, by T. Lusch

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.80 (minor)
- ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
- ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
- ☐ other (specify):

4. ☐ by personal delivery on (date):

(SEAL)

LATHAM & WATKINS LLP
Kenneth M. Fitzgerald (Bar. No. 142505)
Christopher A. Rheinheimer (Bar. No. 253890)
600 West Broadway, Suite 1800
San Diego, California 92101-3375
Telephone: (619) 236-1234
Facsimile: (619) 696-7419

Attorneys for Plaintiffs Steven Sullivan and
Sullivan International Group, Inc.

FILED
CIVIL BUSINESS OFFICE 9
CENTRAL DIVISION

2008 JUL -8 A 11:47

CLERK - SUPERIOR COURT
SAN DIEGO COUNTY, CA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

STEVEN SULLIVAN, an individual;
SULLIVAN INTERNATIONAL GROUP,
INC., a California corporation;

Plaintiff,

v.

TETRA TECH, INC., a Delaware
corporation; TETRA TECH EMI, INC., a
Delaware corporation; JOHN TEEL, an
individual; DANIEL BATRACK, an
individual; RANDY FETTERS, an
individual; MARK WALSH, an individual;
MICHAEL WANTA, an individual;
EDWARD SUSSENGUTH, an individual,
and DOES 1-50, inclusive,

Defendants.

Case Number: 37-2008-00084804-CU-BT-CTL

**FIRST AMENDED COMPLAINT FOR
UNFAIR COMPETITION; INTENTIONAL
INTERFERENCE WITH PROSPECTIVE
ECONOMIC ADVANTAGE; NEGLIGENT
INTERFERENCE WITH PROSPECTIVE
ECONOMIC ADVANTAGE;
INTENTIONAL INTERFERENCE WITH
CONTRACTUAL RELATIONS; FRAUD;
CONCEALMENT; NEGLIGENT
MISREPRESENTATION; BREACH OF
CONTRACT; DEFAMATION; BREACH OF
FIDUCIARY DUTY; INTENTIONAL
INFLECTION OF EMOTIONAL DISTRESS**

JURY TRIAL DEMANDED

COME NOW THE PLAINTIFFS, Steven Sullivan ("Mr. Sullivan") and Sullivan
International Group, Inc. ("Sullivan" or "plaintiff"), who for their Complaint against defendants,
allege as follows:

INTRODUCTION

1. This Complaint seeks redress for injuries inflicted on the plaintiffs as a
result of defendants' unlawful course of conduct, and their deliberate breach of legal duties to the
plaintiffs. Defendant Tetra Tech EMI, Inc. ("TTEMI") is a government contractor that, in

1 concert with the remaining defendants in this action, undertook to abuse the Small Business
2 Administration's Mentor-Protégé Program and small business contract award procedures, in
3 order to illegally garner government contract revenue under false pretenses, in violation of
4 federal regulations governing the award and performance of those contracts.

5 2. TTEMI agreed to serve as Sullivan's mentor and joint venturer, and
6 therefore owed Sullivan duties of loyalty, candor, confidentiality, good faith and fair dealing. In
7 breach of those duties, and with conscious disregard of Sullivan's rights, TTEMI set out to 1)
8 conceal significant cost information from Sullivan in order to force Sullivan to turn over
9 construction projects and contract positions to TTEMI; 2) siphon cash and profits from Sullivan
10 in order to cripple it financially; 3) disparage Sullivan and destroy its reputation to government
11 contract officers and agencies; and, 4) unlawfully compete against Sullivan using a network of
12 captive, TTEMI-controlled entities masquerading as independent small businesses in contract
13 with TTEMI. Using these companies, TTEMI funneled millions of dollars of profit to itself at
14 the expense of legitimate small businesses. Then, after wreaking havoc on Sullivan's small
15 business, defendants attempted to purchase its assets at a steeply reduced price, hoping to take
16 further advantage of the injuries they inflicted.

17 3. As a result of defendants' fraudulent and wrongful conduct, Sullivan lost
18 significant revenues, profits and goodwill, and suffered severe economic damage. In addition,
19 Sullivan's founder and owner Mr. Sullivan was forced into the hospital, where he nearly lost his
20 life due to stress-related heart illness. Through this Complaint, plaintiffs seek to recover
21 damages for these injuries.

22 PARTIES

23 4. Plaintiff Sullivan is a corporation organized and existing under the laws of
24 the State of California, having its principal place of business in San Diego, California.

25 5. Plaintiff Mr. Sullivan is an individual residing in San Diego, California.

26 6. Defendant Tetra Tech, Inc. ("Tetra Tech") is a corporation organized and
27 existing under the laws of the State of Delaware, having its principal place of business in
28 Pasadena, California, and conducting substantial business in San Diego County, California.

1 7. Defendant Tetra Tech EMI, Inc. ("TTEMI") is a corporation organized
2 and existing under the laws of the State of Delaware, having its principal place of business in
3 Chicago, Illinois. TTEMI is a wholly owned subsidiary of Tetra Tech, and conducts substantial
4 business in San Diego County, California

5 8. Plaintiff alleges on information and belief that defendant Daniel Batrack is
6 an individual who resides in California, and is the President of Tetra Tech.

7 9. Plaintiff alleges on information and belief that defendant Randy Fetters is
8 an individual who resides in Seattle, Washington.

9 10. Plaintiff alleges on information and belief that defendant John Teel is an
10 individual who resides in Albuquerque, New Mexico and was, at relevant times, a Senior
11 Executive of TTEMI.

12 11. Plaintiff alleges on information and belief that defendant Mark A. Walsh
13 is an individual residing in San Diego, California and was, at all relevant times, the President of
14 TTEMI.

15 12. Plaintiff alleges on information and belief that defendant Michael Wanta is
16 an individual who resides in San Diego, California and is the Navy Program Manager for
17 TTEMI.

18 13. Plaintiff alleges on information and belief that defendant Edward
19 Sussenguth is an individual who resides in San Francisco, California and is the San Francisco
20 Office Manager of TTEMI.

21 14. Plaintiff is unaware of the true names and capacities of defendants sued
22 herein as DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious
23 names. Plaintiff will seek leave of court to amend this complaint to allege the true names and
24 capacities when they are ascertained. Plaintiff is informed and believes, and on that basis
25 alleges, that each said fictitiously named defendant is responsible in some manner for the
26 wrongful conduct alleged herein, and is liable to plaintiff for the injuries and damages herein
27 alleged.

1 15. In undertaking the acts alleged herein, each defendant was acting as the
2 agent and co-conspirator of the other, acting within the course and scope of his agency, and with
3 authority to act on behalf of and bind the other.

4 **JURISDICTION AND VENUE**

5 16. This Court has personal jurisdiction over the defendants pursuant to Cal.
6 Civ. Proc. Code § 410.10 because the defendants transact and have transacted substantial
7 business within the State of California, thereby purposely availing themselves of the privilege of
8 conducting activities within this State, and because the instant dispute arises out of defendants'
9 unlawful and tortious conduct directed at Sullivan, a party whose principal place of business is in
10 this State.

11 17. Venue in this County is proper pursuant to Cal. Civ. Proc. Code §§ 395
12 and 395.5, in that some of the defendants reside in this County, and because the contracts at issue
13 were entered and were to be performed in this County, and because a substantial amount of the
14 wrongdoing alleged herein took place in this County.

15 **GENERAL ALLEGATIONS**

16 18. Sullivan was founded and built by Steven E. Sullivan, a service-disabled
17 veteran of the United States Navy. Sullivan's business is focused primarily on government
18 contracting work.

19 19. In 2000, Sullivan was first introduced to defendant TTEMI through a
20 mutual federal client, at which time, Sullivan and TTEMI began working together on several
21 small projects with SULLIVAN serving primarily as a subcontractor on Navy work for TTEMI.

22 20. In or around early 2001, Sullivan and TTEMI discussed the merits of an
23 ongoing relationship by which TTEMI would provide significant advice, guidance, and
24 assistance to Sullivan, in order to allow Sullivan to compete for federal contracting opportunities
25 and complete more government contracts on a profitable basis. During this time period, TTEMI
26 advised Sullivan to move away from commercial consulting work, which represented more than
27 80% of Sullivan revenues in 2001, and to focus on federal government contract work.

1 21. In or around August of 2001, Sullivan was certified by the U.S. Small
2 Business Administration ("SBA") as an "8(a), Small Disadvantaged Business," under Section
3 8(a) of the U.S. Small Business Act.

4 22. On or about October 4, 2002, Sullivan and TTEMI entered a Department
5 of Defense Mentor-Protégé Agreement ("DoD Mentor-Protégé Agreement), under which TTEMI
6 agreed to assist Sullivan in order to enhance Sullivan's capabilities to obtain and complete
7 government and commercial contracts. A true and correct copy of the DoD Mentor-Protégé
8 Agreement is attached at Tab A and incorporated by this reference.

9 23. Specifically, in the DoD Mentor-Protégé Agreement, TTEMI agreed to
10 provide Sullivan with technical training and advice, including in the preparation of contract
11 proposals, and to assist Sullivan in developing qualified management personnel and tools
12 necessary to ensure effective and efficient project management, cost control, and schedule
13 maintenance. More specifically, TTEMI agreed to evaluate Sullivan's contract proposals and to
14 train Sullivan in cost estimating, negotiations and the preparation and review of contract
15 proposals.

16 24. In the DoD Mentor-Protégé Agreement, TTEMI also represented and
17 warranted that it had the capability, experience and means required to carry out the services
18 contemplated, and it agreed to perform those services in a diligent and workmanlike manner
19 consistent with professional practices and standards for nationally recognized firms engaged in
20 similar work.

21 25. During 2002, Sullivan was able to secure, with TTEMI's support as its
22 mentor, several large 8(a) direct award contracts, causing Sullivan to hire more staff and
23 continue to develop its relationship with the Navy.

24 26. In August, 2002, at the suggestion of TTEMI, and as part of its effort to
25 build its capabilities to perform Navy environmental service contract work, Sullivan acquired
26 Pacific Treatment Environmental Services, Inc. ("PTES"). Sullivan and its principals undertook
27 significant risk and personal debt in order to consummate the PTES Acquisition.
28

1 27. On or about February 20, 2003, Sullivan and TTEMI entered an SBA
2 Mentor-Protégé Agreement ("SBA Mentor-Protégé Agreement), under which TTEMI agreed to
3 partner with Sullivan in a mentor-protégé relationship, in order to enhance Sullivan's capabilities
4 to satisfy government and commercial contracting requirements, and to increase Sullivan's
5 participation in government and commercial contracting activities. A true and correct copy of
6 the SBA Mentor-Protégé Agreement is attached at Tab B and incorporated by reference.

7 28. Pursuant to the SBA Mentor-Protégé Agreement, TTEMI agreed to assist
8 Sullivan by: facilitating Sullivan's interaction with federal agencies; assisting Sullivan in
9 preparing contract bids, joint venturing with Sullivan to pursue government contracts;
10 developing Sullivan's quality assurance and quality control methods to meet federal agency
11 standards; evaluating Sullivan's contract bids and training Sullivan in cost estimating and bid
12 preparation; preparing and reviewing Sullivan's contract bids, guiding Sullivan on money
13 management and financial reporting; providing work and training to expand Sullivan's
14 capabilities in project management; and, training Sullivan in the use of cost controls and proper
15 sequence of project tasks.

16 29. In the SBA Mentor-Protégé Agreement, TTEMI represented and
17 warranted that it had the capability, experience and means required to carry out the services
18 promised therein, and it agreed to provide those services in a diligent and workmanlike manner
19 consistent with professional practices and standards for nationally recognized firms engaged in
20 similar work.

21 30. In the SBA Mentor-Protégé Agreement, TTEMI agreed to protect
22 proprietary information provided to it by Sullivan, and to restrict access to Sullivan's proprietary
23 information to those individuals directly participating in providing assistance to Sullivan under
24 the SBA Mentor-Protégé Agreement.

25 31. When entering the SBA Mentor-Protégé Agreement, TTEMI represented
26 to the SBA that it planned to assist Sullivan in a number of areas, including financial,
27 accounting, project and corporate management, technical capability, quality assurance and
28 control, business development and marketing.

1 32. TTEMI and Sullivan renewed the SBA Mentor-Protégé Agreement at the
2 end of each term, until its eventual termination in February, 2007.

3 33. On May 9, 2003, pursuant to the SBA Mentor-Protégé Agreement, at
4 TTEMI's suggestion, the parties formed a joint venture called "SulTech," for the purpose of
5 pursuing Navy environmental services contracts. SulTech was formed by Sullivan and TTEMI
6 with Sullivan initially receiving a 15% equity stake, which the parties later agreed to increase to
7 30%. Pursuant to the SulTech joint venture, Sullivan made a significant investment in
8 infrastructure, equipment and personnel in remote locations to support the development of its
9 Navy environmental service offering.

10 34. The DoD and SBA Mentor-Protégé Agreements, the SulTech joint venture
11 agreement and the communications between the parties created a relationship of trust and
12 confidence between them and gave rise to fiduciary duties on the part of TTEMI toward its
13 protégé and joint venturer Sullivan.

14 35. In or around July 2003, the U.S. Navy awarded a \$50 million
15 environmental services contract to SulTech, representing Sullivan's first incumbent contract with
16 the U.S. Navy, and a significant milestone in the Sullivan/TTEMI relationship. In order to win
17 and perform this contract, Sullivan invested significant money in hiring and training qualified
18 personnel, acquiring necessary equipment and physical resources, and otherwise investing in the
19 infrastructure necessary to perform its obligations under the Navy contract. As Sullivan would
20 later learn, its investment and efforts to perform and compete as a legitimate entity were not in
21 keeping with TTEMI's intentions for the role of its SBA protégé partners.

22 36. Instead, on information and belief, TTEMI and its parent company,
23 defendant Tetra Tech, Inc. ("Tetra Tech") routinely partnered with small businesses which
24 lacked the resources necessary to perform the required work levels under governing regulations,
25 teaming agreements or joint venture agreements, pursuant to which TTEMI and Tetra Tech won
26 significant government contract awards. On information and belief, TTEMI and Tetra Tech
27 partnered with these small businesses in order to win government contracts under the false
28 pretense that the small business partners were performing significant work and receiving

1 significant revenues, when in reality, TTEMI and Tetra Tech actually performed the vast
2 majority of work and retained the vast majority of revenues and profits that should have gone to
3 their small business partners.

4 37. In addition, and contrary to its promises and obligations under governing
5 SBA regulations and the DoD and SBA Mentor-Protégé Agreements, TTEMI systematically
6 worked to compete against its own protégé Sullivan for Navy and other government contracts, by
7 partnering with other small businesses for the same contract opportunities that it could and
8 should have pursued with Sullivan.

9 38. The federal regulation governing mentor-protégé relationships, 13 C.F.R.
10 § 124.520(b)(2), generally prohibits mentors from having more than one protégé at a time. A
11 mentor may have more than one protégé only "where the additional mentor/protégé relationship
12 will not adversely affect the development of either protégé firm (e.g., the second firm cannot be a
13 competitor of the first firm)."

14 39. In violation of this regulation, TTEMI had at least four mentor-protégé
15 relationships in place beyond its relationship with Sullivan during the relevant time frame herein,
16 and TTEMI competed against Sullivan for numerous contract opportunities with its other
17 protégés during the time that it was obligated, under 13 C.F.R. §124.520(b)(2), and under its
18 contractual and fiduciary duties, to refrain from competing against Sullivan for those
19 opportunities.

20 40. The federal regulations governing contracts awarded to 8(a) small
21 businesses and SBA mentor-protégé joint ventures, impose minimum percentage requirements
22 for the work and revenue earned by 8(a) small businesses and protégé firms. Generally, those
23 regulations, 13 C.F.R. §§ 124.510, 124.513, require the small businesses to perform a significant
24 portion of the work on any 8(a) contract, and they require joint venture agreements with 8(a)
25 small businesses to specify that the 8(a) small business will receive at least 51% of net profits
26 earned by the joint venture. For construction contracts, 48 C.F.R. § 508(e) requires that the
27 small business in a mentor-protégé joint venture perform at least 15% of the work with its own
28 employees in any contract which exceeds \$100,000.

1 41. In violation of these regulations, and in breach of its contractual and
2 fiduciary duties to Sullivan, TTEMI and Tetra Tech bid on, procured and performed significant
3 8(a) and small business set aside contracts, using joint venture agreements with 8(a) protégés
4 other than Sullivan, in which TTEMI and Tetra Tech managed the work (steering most of that
5 work to itself), controlled the cash flow (steering most of that cash to itself), and performed a
6 vast majority of the work required to be performed by small businesses. Specifically:

7 a. On or about March 23, 2006, TTEMI entered a joint venture
8 agreement with St. George Chadux Corporation ("Chadux"), an Alaska native-owned 8(a) small
9 business, pursuant to which the joint venture, named "ChaduxTt JV," would pursue and perform
10 an A-E Firm Fixed Price ID/IQ contract involving CERCLA/RCRA/UST environmental studies
11 on various Navy and Marine Corps installations (the "CERCLA/RCRA Contract"). TTEMI did
12 not agree in the ChaduxTt JV joint venture agreement that Chadux would receive a significant
13 portion of the net profit from the ChaduxTt JV, nor, on information and belief, has Chadux
14 received a significant portion of the net profits from that joint venture, nor has Chadux
15 performed a meaningful percentage of the work, as required by federal regulations. Instead,
16 TTEMI has received the vast majority of revenues and net profits from the ChaduxTt JV, and
17 Chadux brought little, if anything, to the joint venture relationship other than its 8(a) status,
18 which is prohibited by 13 C.F.R. § 124.520(e)(2).

19 b. In or around 2003, Sullivan approached TTEMI to support bidding
20 on the U.S. Navy SWDIV 8(a) CERCLA/RCRA Contract (the "CERCLA Contract") which
21 called for work Sullivan had been performing with TTEMI for the past two years. TTEMI
22 declined Sullivan's offer, stating that it had chosen another 8(a) firm, Barajas and Associates
23 ("Barajas"), through which to bid the CERCLA Contract. Sullivan is informed and believes, and
24 thereon alleges, that Barajas had not performed any environmental work with the Navy; that the
25 Barajas offices listed in the TTEMI/Barajas joint proposal were not legitimate places of business;
26 and that Barajas could not have performed the 51% of the contract required by applicable federal
27 regulations.

1 c. In or around February 2005, defendants began working to establish
2 an SBA Mentor-Protégé relationship between TTEMI and Heritage Global Corporation, an
3 American Indian-owned company which performed information technology and systems
4 integration work. On behalf of TTEMI, defendant Fetters falsely represented to Heritage Global
5 Corporation that Sullivan was about to graduate the mentor-protégé program with TTEMI, such
6 that TTEMI was interested in bringing on a new protégé for government contracts construction
7 work when Sullivan graduated. Shortly thereafter, TTEMI began using a newly formed Heritage
8 Global Corporation subsidiary, Heritage Global Construction ("Heritage Global") to perform
9 government construction contracts, which Sullivan had performed or should have performed.
10 TTEMI used Heritage Global's experience on those contracts to compete against Sullivan for
11 government contracts. In support of these efforts to compete against Sullivan, with TTEMI's
12 approval, and Heritage Global advertised on its website that it was in a mentor-protégé
13 relationship with TTEMI. TTEMI even billed Sullivan for Heritage Global work. Heritage
14 Global, in turn, employed and paid defendant Fetters, in what was effectively a kickback scheme
15 through which Fetters benefited personally at Sullivan's expense, while defendants created and
16 exploited an adverse condition for Sullivan, in violation of 13 C.F.R. § 124.520(b)(2) and their
17 legal duties to Sullivan.

18 d. On information and belief, in or about March 2005, TTEMI
19 formed a mentor-protégé relationship with a company called TriEco, LLC ("TriEco") a shell
20 company with no meaningful business operations or independent existence, which was created,
21 controlled and maintained by TTEMI for the purpose of unlawfully obtaining government
22 contracts under the Small Business Act.

23 e. In or about March, 2005, Tetra Tech formed a mentor-protégé
24 relationship with Sealaska Environmental Services ("Sealaska"), a company whose operations
25 are run by TTEMI's Vice President Neil Hart. On information and belief, Sealaska was
26 effectively controlled by Tetra Tech, did not perform any meaningful portion of work on
27 government contracts awarded to its joint venture with Tetra Tech, and was used by Tetra Tech
28 for the purpose of unlawfully obtaining government contracts under the Small Business Act. On

1 information and belief, TTEMI and Sealaska won a \$20 million dollar U.S. Navy contract at Port
 2 Hueneme in Southern California in 2005 under the SBA Mentor-Protégé Program, but Sealaska
 3 did not perform any meaningful portion of the work under that contract, or receive any
 4 meaningful portion of the contract revenues. On information and belief, Sealaska and Tetra Tech
 5 are currently under investigation by the U.S. Navy Inspector General concerning these practices.
 6 At all relevant times, TTEMI concealed the existence of its mentor-protégé relationship from
 7 Sullivan, and concealed the fact that TTEMI was using Sealaska to compete against Sullivan for
 8 small business opportunities in the Navy environmental services sector.

9 42. On information and belief, TTEMI and TetraTech chose to create adverse
 10 conditions for Sullivan, and to actively compete against Sullivan while purporting to be its
 11 mentor, because Sullivan actually performed significant work on government contracts, and did
 12 not allow TTEMI and TetraTech to use Sullivan as a sham, pass-through entity, as TTEMI and
 13 TetraTech used, and continue to use, other 8(a) businesses for its government contracting
 14 business. Specifically, TTEMI and Tetra Tech violated 13 C.F.R. §124.520(b)(2), and their
 15 contractual and fiduciary duties to Sullivan, as follows:

16 a. On information and belief, beginning in or about January, 2005,
 17 TTEMI competed against Sullivan with a company called Newland Entities, Inc., a company in
 18 direct competition with Sullivan, which was used by TTEMI for the purpose of competing
 19 against Sullivan for government contracts. By July 15, 2005, defendant Wanta emailed
 20 defendants Teel, Fetters and Walsh that a "large Bureau of Reclamation Project will be awarded
 21 to the Chadux/Newland Entities/Tetra Tech team." (Tab C.) At no time did defendants disclose
 22 to Sullivan that they were competing against Sullivan to win this government contract, which
 23 TTEMI had previously represented to Sullivan that it would perform with Sullivan.

24 b. On or about March 23, 2006, TTEMI entered a joint venture
 25 agreement with St. George Chadux Corporation, an Alaska native-owned 8(a) small business,
 26 pursuant to which the joint venture, named "ChaduxTt JV," would pursue and perform an A-E
 27 Firm Fixed Price ID/IQ contract involving CERCLA/RCRA/UST environmental studies on
 28 various Navy and Marine Corps installations (the "CERCLA/RCRA Contract"). TTEMI did not

1 agree in the ChaduxTt JV joint venture agreement that Chadux would receive a significant
 2 portion of the net profit from the ChaduxTt JV, nor, on information and belief, has Chadux
 3 received a significant portion of the net profits from that joint venture, as required by federal
 4 regulations. Instead, TTEMI has received the vast majority of revenues and net profits from the
 5 ChaduxTt JV. Indeed, from the summer of 2006 to December, 2007, defendant Feters, a
 6 TTEMI executive, acted as the President of Chadux, helping TTEMI to effectively control and
 7 operate Chadux as an operating division of itself.

8 c. On information and belief, in or around January 2005, defendants
 9 began working to establish an SBA Mentor-Protégé relationship between TTEMI and Heritage
 10 Global Corporation, an American Indian-owned company. TTEMI used a Heritage Global
 11 subsidiary, Heritage Global Construction ("Heritage Global") to perform government contracts,
 12 which Sullivan had performed or should have performed, and used Heritage Global's experience
 13 on those contracts to compete against Sullivan for government contracts. TTEMI even billed
 14 Sullivan for Heritage Global work. Heritage Global, in turn, employed and paid defendant
 15 Feters, in what was effectively a kickback scheme through which Feters benefited personally at
 16 Sullivan's expense, while defendants created and exploited an adverse condition for Sullivan, in
 17 violation of 13 C.F.R. § 124.520(b)(2) and their legal duties to Sullivan.

18 d. On information and belief, in or about March 2005, TTEMI
 19 formed a mentor-protégé relationship with a company called TriEco, LLC, a shell company with
 20 no meaningful business operations or independent existence, which was created, controlled and
 21 maintained by TTEMI for the purpose of unlawfully obtaining government contracts under the
 22 Small Business Act. The efforts of defendants TTEMI, Wanta and Feters to use TriEco to
 23 unlawfully compete against Sullivan for government contracts are evidenced in a PowerPoint
 24 presentation attached hereto as Tab D.

25 43. Defendants knew that their efforts to compete against Sullivan using other
 26 small business protégés were unlawful. Thus, in an email dated March 22nd, 2005 (Tab E),
 27 defendant Wanta sent an internal email, discussing TTEMI's efforts to obtain SBA approval of a
 28 new mentor-protégé agreement with Chadux, or some other American Native Company. In this

1 email, defendant Wanta stated: "Given our existing SBA M-P agreement with Sullivan, we are
2 being careful that there is no conflict – essentially we need to focus on a different region and
3 business line, which is our plan. So, I do not believe we will be able to address the Navy's
4 request to set up an ANC JV for performing A-E environmental work at SWDIV. We will not be
5 using any other SBA M-P to address the Navy's request on this focus area as long as we are in
6 the partnership with Sullivan."

7 44. In an email dated July 8, 2005 (Tab F), TTEMI executives were warned
8 by Roger Argus to stay "cognizant of our partnership with Sullivan to make sure we don't get
9 into any conflict situations."

10 45. Despite knowing that using "any other SBA [mentor-protégé]" to bid on
11 Navy environmental services work was unlawful, due to the conflict it created with TTEMI's
12 obligations to its protégé Sullivan, TTEMI went on to do just that, in violation of its legal
13 obligations and duties to Sullivan.

14 46. In its later internal communications, TTEMI boasted of its success in
15 skirting the SBA regulations, and in abusing the mentor-protégé program as a scheme to obtain
16 significant government contract money that should have gone to small businesses. Thus, in a
17 January 18, 2006 internal email to TTEMI Regional Managers entitled "Third SBA Mentor-
18 Protégé Firm approved by SBA" (Tab G), TTEMI's Navy Program Manager Michael Wanta
19 acknowledged that the SBA "typically only allows large businesses to have one protégé firm at a
20 time," but went on to describe the SBA's approval of three TTEMI mentor-protégé relationships
21 (Sullivan, Chadux, and TriEco). In describing TTEMI's success with this scheme, Wanta touted
22 the ability of TTEMI to "form small business ventures with all 3 of these firms where [TTEMI]
23 can manage the work, control cash flow, perform a vast majority of the work, and qualify
24 as a small business." In this same email, Wanta bragged of TTEMI's success in using this
25 scheme to win \$430 million in government contracts.

26 47. In an internal presentation, defendant Feters presented TTEMI executives
27 with a pictorial depiction of the sham, pass-through model TTEMI attempted, without initial
28 success, to impose on Sullivan. In this model, Sullivan was pictured as winning a direct contract

award, and TTEMI was pictured as specifying the project superintendent (on Sullivan's payroll), providing "all construction management responsibility" and "project management, and directing all subcontractors (to be paid by Sullivan). A true and correct copy of defendant Fetters' presentation is attached hereto at Tab H. According to Fetters' vision, Sullivan did nothing more than serve as a recipient of a contract award, and the source of payment to TTEMI's project superintendent, project management, and subcontractors. This model violates 13 C.F.R. § 125.6 and 48 C.F.R. § 19.508(e), which require a small business to actually perform at least 15% of work on construction projects.

48. On information and belief, TTEMI misled SBA personnel about its compliance with applicable regulations, failing to disclose its competitive efforts against its protégé Sullivan. As a result of TTEMI's concealment of truthful information, SBA personnel were duped into believing that TTEMI was operating in compliance with its duties. As a result, SBA personnel failed to take action to penalize TTEMI.

49. On information and belief, TTEMI misled SBA personnel about its compliance with applicable regulations, failing to disclose its competitive efforts against its protégé Sullivan. As a result of TTEMI's concealment of truthful information, SBA personnel were duped into believing that TTEMI was operating in compliance with its duties. As a result, SBA personnel failed to take action to penalize TTEMI.

TTEMI's Predatory Exploitation of VA Contract Losses

50. By 2004, Sullivan had performed successfully for approximately eighteen months on small Veterans Administration (VA) construction projects and was considering an expansion of this service focus. Due to Sullivan's ability to win direct award contracts with the VA, a government agency with which TTEMI had no previous relationship, Sullivan and TTEMI agreed to pursue more of this work together.

51. In the summer of 2004, Sullivan and TTEMI began bidding on several VA construction opportunities together. TTEMI agreed to obtain performance and payment bonds on these projects, charging Sullivan a 25% mark-up on the premium for those bonds.

1 52. In or around September 2004, Sullivan was awarded over \$12 million in
2 VA contracts, for the construction of facilities at VA hospital facilities in Reno, NV, Palo Alto,
3 CA and Loma Linda, CA (collectively, the "VA Direct Awards"). Before obtaining bonds for
4 these projects, TTEMI reviewed the bids and contracts for them, but failed to warn Sullivan that
5 its bids were too low to permit the projects to be performed profitably, despite TTEMI's
6 purported expertise in construction cost estimating, proposal preparation, and construction
7 project management.

8 53. According to an internal TTEMI document (Tab I), TTEMI "co-
9 developed" the project bids with Sullivan, and TTEMI was "at the table during negotiations"
10 with the VA.

11 54. In or around October 2004, TTEMI/Tetra Tech notified Sullivan that
12 TTEMI's Director of Construction, defendant Randy Feters, would be the overall leader for this
13 VA Construction work, and that Mr. Feters would be supported by Ron Carol and Dave
14 Takemoto. TTEMI represented to Sullivan that Feters, Carol and Takemoto had significant
15 construction management training and experience; that these key employees were "top tier"
16 talent that had supported other TTEMI large scale construction projects; and were the best
17 TTEMI people to manage the VA Direct Award projects.

18 55. In or around November 2004, work on the VA Direct Awards began.
19 TTEMI assumed full and active responsibility for project management of the VA Direct Awards,
20 as required by the TTEMI surety, which issued performance and payment bonds to guarantee
21 Sullivan's performance and payment to subcontractors and materialmen.

22 56. In March, 2005, defendant Feters was reassigned by TTEMI to manage
23 TTEMI's Geneva Steel Plant project in Utah. Feters himself had previously recognized, in an
24 email dated January 24, 2005 (Tab J), that the VA Direct projects "really need full time TtEMI
25 supervision." Despite the need for a full-time project manager on the VA Direct Award projects,
26 TTEMI had Mr. Feters attempt to manage the VA Direct Award projects remotely from the
27 TTEMI Utah project location. As a result of his reassignment to TTEMI's Geneva Steel Plant
28 project, Feters failed to devote the necessary time or energy to supervising the VA Direct Award

1 projects. Indeed, one of Fetters' few acts of involvement with Sullivan during this period was to
2 suggest charging Sullivan for part of the lease on real property Fetters had located to use as a
3 staging area for Geneva Steel Plant project.

4 57. On information and belief, Fetters had no formal construction
5 management education or training, no significant construction management experience, and was
6 incapable of competently managing the VA projects, particularly in light of his relocation to
7 Utah and commitments to other TTEMI business.

8 58. Indeed, on information and belief, and unbeknownst to Sullivan at the
9 time Fetters served as TTEMI's Director of Construction, Fetters had concealed his prior
10 employment in a construction capacity with the Los Angeles Unified School District, where he
11 had been terminated. On information and belief, Fetters had also previously bankrupted a
12 consulting company devoted to arranging small business partnerships with large companies, and
13 had promoted municipal projects for personal benefit while serving on the Edgewood,
14 Washington City Council. TTEMI knew or should have known of Fetters' history of
15 concealment, self-dealing and unethical conduct, but TTEMI recklessly placed Fetters in a
16 position of trust and authority over Sullivan's construction projects. There, and thereafter,
17 TTEMI aided, abetted and conspired with Fetters as he schemed to violate small business
18 regulations so that TTEMI could, in the words of defendant Wanta, "perform a vast majority of
19 the work, and qualify as a small business" on government contracts for small businesses.

20 59. On information and belief, the other TTEMI personnel assigned to manage
21 the VA Direct Award projects lacked the necessary construction management education or
22 training, and lacked the necessary construction management experience, and were incapable of
23 competently managing the VA projects.

24 60. By March 2005, before any significant construction on the VA Direct
25 Award projects had taken place, TTEMI determined that Sullivan would lose significant money
26 on these projects. Rather than attempting to manage this problem for its protégé, TTEMI
27 decided instead to exploit Sullivan's situation for TTEMI's own gain. To that end, TTEMI,
28 defendants Teel, Wanta and Fetters conceived of and executed a plan to conceal their conclusion

1 that construction costs would exceed Sullivan's contract revenues, in order to create financial
2 hardship for Sullivan, which defendants then exploited for their own gain.

3 61. Rather than assisting Sullivan in completing the projects, TTEMI
4 intentionally withheld the projects' projected losses from Sullivan, in order to create a situation
5 where Sullivan faced cash flow problems due to unpaid subcontractors and materialmen, at
6 which point Sullivan was forced to turn over the projects completely to TTEMI. By concealing
7 information in order to create a situation whereby Sullivan was forced to turn over the projects,
8 TTEMI was able to reap the project revenues from the VA, and from Sullivan itself, as detailed
9 more fully below.

10 62. In addition, defendants Fetters conceived of and executed a scheme with
11 defendants Teel and TTEMI, by which these defendants conspired to destroy Sullivan's business,
12 in order to facilitate a purchase of that business at a low price by Chadux, one of TTEMI's sham
13 small business protégés. This scheme, called "Fetter's Model" in an internal TTEMI
14 presentation (Tab I), called for TTEMI to take advantage of Sullivan's financial strain by forcing
15 a sale of Sullivan's business to Chadux. TTEMI then planned to reap 85% of the revenue and
16 associated profit from Chadux, in violation of federal regulations governing the work and profit
17 split between small businesses and large business mentor or joint venture firms.

18 63. Unbeknownst to Sullivan, even while in a mentor-protégé relationship
19 with Sullivan, and while owing Sullivan fiduciary duties, TTEMI was busy preparing to compete
20 against Sullivan, using Chadux and an unlawful financing/securities fraud scam as instruments in
21 its scheme. This plan is evidenced in numerous TTEMI internal emails, including one between
22 defendants Teel and Fetters (Tab K), discussing a plan to hire a key Sullivan employee "when
23 we finally get the other things going..." These "other things" got going a short time thereafter.

24 64. Thus, in the summer of 2005, the Navy announced that it was re-
25 competing the CERCLA/RCRA Contract, the \$50 million dollar contract that SulTech had won
26 earlier. Upon learning that the CERCLA/RCRA Contract was being re-competed, Sullivan
27 contacted TTEMI and was told by defendant Wanta, "we have no intention of bidding on this
28 contract with SULLIVAN in any form or fashion and we have already determined our strategy."

1 When Sullivan inquired as to the TTEMI strategy, Wanta stated, "we are planning to bid with a
2 ANC [American Native Company] so we can perform on the entire contract and just pay the
3 ANC a pass through fee." In subsequent communications, upon which Sullivan reasonably
4 relied, TTEMI recanted these admissions, and represented that it was competing for the
5 CERCLA/RCRA Contract only as a subcontractor, and not as part of a mentor-protégé
6 relationship.

7 65. In truth, and contrary to TTEMI's representations that it was only pursuing
8 the CERCLA/RCRA contract as a potential subcontractor, defendants Fetters and TTEMI were
9 busy conspiring to compete for the contract against Sullivan. To that end, on information and
10 belief, Fetters negotiated with Home Solutions a \$1 million loan to Chadux from Home
11 Solutions of America, then a publicly traded company on the NASDAQ exchange. In exchange
12 for this loan, Fetters promised some participation on the \$50 million contract to Home Solutions,
13 as evidenced by a March 13, 2007 press release from Home Solutions (Tab L), touting its
14 participation in the contract as a joint venture partner with Chadux. Subsequent analyst reports
15 and press articles described this press release, which caused Home Solutions' stock to rise 8%, as
16 misleading, in that it falsely implied that Home Solutions would receive one-third of the \$50
17 million contract revenues. Home Solutions has since been de-listed from the NASDAQ
18 exchange, amidst a morass of accounting fraud and self-dealing allegations.

19 66. By no later than October 7, 2005, defendants Teel, Fetters and TTEMI had
20 determined internally to end their efforts to support Sullivan, and to cease supporting Sullivan to
21 compete for government contracts. These defendants decided to complete one of the VA Direct
22 Award projects in order to protect TTEMI's reputation, so that TTEMI could then secretly
23 pursue similar projects with other partners. Defendants Teel, Fetters, and TTEMI concealed this
24 plan from Sullivan, and discouraged Sullivan from entering other mentor-protégé relationships,
25 in order to prevent Sullivan from competing against TTEMI or succeeding in government
26 construction contract projects.

27 67. TTEMI's fraudulent scheme is detailed in TTEMI's internal emails.
28 Specifically:

1 a. In an email dated March 8, 2005 (Tab M), defendant Teel
2 informed defendants Feters and Wanta that he needed a plan to present to Sullivan of how the
3 projects would be managed to completion. According to Teel, "We need to get them to turnover
4 project completely. . . They cannot charge to the project at all, or minimally as defined by you."
5 Teel went on to propose that TTEMI review Sullivan's remaining projects, so that TTEMI could
6 know "whether or not we need to take those over to [sic]."

7 b. In an email dated March 9, 2005 (Tab N), defendant Teel
8 instructed defendants Feters and Wanta not to apprise Sullivan of the anticipated losses.
9 According to Feters, "I do not think they even have a good idea how much trouble they are in,"
10 to which Teel responded, "Let's not get into with them yet. . . Let's get the go forward plan
11 together first and then we will meet with them to layout the plan. . . This will not be a
12 negotiation."

13 c. In an email dated July 25, 2005 (Tab O), defendant Wanta reported
14 that he had met with Sullivan's founder Steve Sullivan, and that TTEMI's plan to conceal project
15 cost information had succeeded ("We heard he finally realized things aren't going well on the
16 construction projects.")

17 d. In an email nearly one month later describing an unpaid Sullivan
18 subcontractor, defendants Wanta, Argus and Feters continued to discuss their concealment of
19 adverse cost information, and the predicted effect it was now having on Sullivan. In this email,
20 dated August 31, 2005 (Tab P), Wanta apprises Argus and Feters that Sullivan's unpaid
21 subcontractor Newland was complaining to TTEMI about unpaid invoices, prompting Argus to
22 instruct defendants to continue their pattern of concealment: "Thanks for the heads up; I strongly
23 suggest we stay out of the fray - play dumb."

24 e. In an email dated October 7, 2005 (Tab Q), defendant Feters
25 informed TTEMI executives that "[w]e should develop a phase-out plan for construction, and
26 possibly environmental work" with Sullivan. This proposal was enthusiastically endorsed within
27 TTEMI, but never disclosed to Sullivan or its principal Mr. Sullivan, who TTEMI executives
28 referred to hatefully as "the ballerina."

1 f. In an internal presentation prepared on or about October 13, 2005
2 (Tab I), the Fetter's Model was presented, which called for Sullivan to sell its business,
3 weakened by TTEMI's actions on the VA Direct Award projects, so that TTEMI could use
4 Chadux to earn 85% of the revenue and profit, and so that TTEMI could use Chadux as its sham
5 small business joint venture partner in order to win government contract awards. According to
6 the Fetter's Model, TTEMI had a "realistic goal" of earning over \$20-50 million per year using
7 this approach.

8 68. Even while intentionally concealing the fact that Sullivan would suffer
9 losses on the projects, TTEMI itself contributed to Sullivan's losses on these projects, by failing
10 to devote sufficient, experienced, capable project management personnel; and approving
11 significant out-of-scope work with no compensation from the VA and with no prior notification
12 to or consent from Sullivan, at Sullivan's expense.

13 69. After concealing and contributing to Sullivan's cost overruns on the
14 projects, TTEMI then stepped in and took over the projects, under the guise of helping to
15 mitigate Sullivan's losses. TTEMI did so by inducing Sullivan to enter a series of Construction
16 Management Agreements, which permitted TTEMI to enrich itself with significant mark-ups on
17 management, labor and material costs charged to Sullivan by TTEMI and its subcontractors.

18 70. After inducing Sullivan to enter the Construction Management
19 Agreements, TTEMI then proceeded to charge Sullivan significant sums for its purported project
20 management and other services. Included in the charges to Sullivan were bills from Heritage
21 Global, which was issued an original purchase order of not-to-exceed \$100,000, but which
22 ultimately charged Sullivan approximately \$940,000.

23 71. On information and belief, Heritage Global was a shell company
24 dominated and controlled by TTEMI. On information and belief, Heritage Global employed
25 defendant Fetter, and compensated him in exchange for billings he generated for Heritage
26 Global. Unbeknownst to Sullivan at the time, Fetter had manufactured the Heritage Global
27 billings to Sullivan, using the services of his wife, who also worked at Heritage Global. By
28 using Heritage Global to bill Sullivan for work on the VA Direct Award projects, and by

1 receiving compensation from Heritage Global and TTEMI, defendant Fetters was effectively
2 able to skim money from the VA and from Sullivan, for his own personal benefit, in violation of
3 anti-kickback and conflict of interest laws. At no time did Fetters, Heritage or TTEMI disclose
4 to Sullivan the fact that Fetters was employed by Heritage Global, or that Fetters' wife was
5 generating Heritage Global purchase orders to Sullivan, or that Fetters was effectively receiving
6 compensation from Sullivan through Heritage Global invoices.

7 72. After completing TTEMI's scheme to take over Sullivan's VA Direct
8 Award projects by taking advantage of its prior concealment of cost information from Sullivan,
9 defendant Fetters communicated the success of TTEMI's fraudulent course of conduct internally.
10 Thus, in an email dated January 23rd, 2006 (Tab R), three days after the Construction
11 Management agreements were signed, Fetters forwarded an email chain dating back nine months
12 - the March 9, 2005 email in which Fetters that indicated that **"I do not think they even have a
13 good idea how much trouble they are in yet,"** with the corresponding response from defendant
14 Teel, saying, **"Let's not get into with them yet....Lets get the go forward plan together first,
15 and then we will meet with them to lay out the plan....This will not be a negotiation."**
16 When forwarding these emails nine months later, after the Construction Management agreements
17 were signed, defendant Fetters, stated: "For your reading pleasure." This email clearly conveyed
18 the message: mission accomplished.

19 73. After inducing Sullivan to enter the Construction Management
20 Agreements, TTEMI refused to allow Sullivan to communicate with the VA, even though
21 Sullivan's reputation was on the line with regard to the VA Direct Award projects.

22 74. On information and belief, in its communications to the VA, TTEMI made
23 false and defamatory statements about Sullivan and its competence and integrity, in order to
24 boost TTEMI's own reputation at its protégé's expense.

25 75. On information and belief, in its communications to the VA, TTEMI
26 agreed to significant out-of-scope work, which was then charged to Sullivan, further
27 exacerbating Sullivan's losses.

1 76. As a result of its exclusion from VA meetings, Sullivan was left unable to
2 protect its reputation from TTEMI's false and misleading statements, and was unable to prevent
3 TTEMI from agreeing to significant out-of-scope work at Sullivan's expense.

4 77. Further exploiting the financial strain caused by its own mismanagement
5 and concealment of material financial information, TTEMI then sought to further exploit
6 Sullivan's hardship by engaging in a series of predatory loans, designed to bring a surrender of
7 additional contract revenues to TTEMI from Sullivan, and written with onerous default
8 provisions under which Sullivan would lose significant additional government contract positions
9 to TTEMI.

10 78. On January 31, 2006, TTEMI agreed to loan Sullivan \$2.5 million to
11 finance the shortfall from the VA Direct Award projects to the extent there was any. Sullivan
12 thereafter executed three promissory notes which were personally guaranteed by Sullivan's
13 founder and principal Steve Sullivan and William Ulmer, the other principal of Sullivan at the
14 time. Sullivan also made an oral agreement with defendant Batrack to ultimately split the total
15 eventual loss even if it exceeded the amounts set forth in the CM Agreements, based on a
16 representation from defendant Fetters that the projects could be completed at a figure below the
17 CM Agreements amounts.

18 79. The first promissory note was due for repayment on April 1, 2006 as it
19 was needed for Sullivan to catch up on all of the unpaid contractors for the VA Direct Award
20 Projects through the end of 2005. TTEMI threatened to end Sullivan's participation on the EPA
21 Region 5 RAC Contract if the loan was not repaid on time.

22 80. The TTEMI loans were induced by TTEMI's fraud and concealment.
23 Specifically, at the time Sullivan agreed to borrow money from TTEMI to cover project losses
24 on the VA Direct Award projects, Sullivan was unaware of the following facts, which were
25 known to TTEMI, and which TTEMI had a duty to disclose:

26 a. Before construction commenced, TTEMI had concluded that
27 Sullivan would lose significant money performing the VA Direct Award projects;

28 b. While the projects were being performed, defendants had decided

1 to stop supporting Sullivan as TTEMI's protégé, and were actively competing against Sullivan
2 using other protégés and small businesses;

3 c. While the projects were being performed, on information and
4 belief, TTEMI was making false and defamatory statements about Sullivan to the VA, and to
5 other government agencies;

6 d. Fetters was self-dealing and skimming money from the VA Direct
7 Award projects and Sullivan, through his undisclosed compensation from Heritage Global;

8 e. Fetters and TTEMI were actively working to obtain financing for
9 Chadux from Homes Systems of America in order to help Chadux and TTEMI win the
10 CERCLA/RCRA contract;

11 f. Defendants were using small business government contractors as
12 pass-through agents for TTEMI to obtain government contracts it would not otherwise obtain.

13 81. The TTEMI loans were also necessitated by TTEMI's mismanagement of
14 the VA Direct Awards projects, and but TTEMI's failure to competently perform its obligations
15 under the SBA Mentor-Protégé Agreement. But for TTEMI's mismanagement and failure to
16 perform its obligations under the SBA Mentor-Protégé Agreement, Sullivan never would have
17 been forced to enter the loans, and never would have become indebted to TTEMI.

18 82. By March, 2006, shortly before the first loan was due for repayment,
19 Sullivan became aware of a Mentor-Protégé relationship between TTEMI and TriEco, which had
20 not been previously disclosed to Sullivan. Concerned that TTEMI was violating the adverse
21 condition regulation, 13 C.F.R. § 124.520(b)(2), and concerned that TTEMI would compete
22 against Sullivan using TriEco instead of Sullivan, Sullivan wrote to the SBA and the Navy.
23 TTEMI became aware of Sullivan's correspondence, and engaged in a heavy-handed and
24 fraudulent course of dealing to prevent the SBA or Navy from learning the truth about TTEMI's
25 abuse of the government's small business programs.

26 83. On September 21, 2006, in a telephonic meeting with Steve Sullivan,
27 defendant Batrack, the Chief Executive Officer of Tetra Tech, demanded that Sullivan send a
28 letter to the SBA, drafted by counsel for Tetra Tech for Sullivan's signature, claiming that

1 TTEMI had disclosed to Sullivan all of its mentor-protégé relationships. In the course of
2 communicating with Sullivan about that issue, Batrack concealed the fact that TTEMI had
3 current or pending mentor-protégé relationships with at least four other small businesses,
4 including Chadux.

5 84. In addition, in the September 21, 2006 telephonic meeting, Batrack
6 promised Sullivan that TTEMI would pursue at least four EPA contract opportunities with
7 Sullivan, when in truth, TTEMI had already determined not to pursue government contract
8 opportunities with Sullivan. As Batrack knew, but did not disclose to Sullivan, TTEMI had
9 already decided to discontinue its relationship with Sullivan, and to instead pursue all future
10 government contract opportunities with Chadux, and other sham small business protégés, as part
11 of the scheme to game the government contracts small business system for unlawful gain. This
12 undisclosed decision and plan are evidenced by, among other things:

13 a. An October 8, 2005 internal TTEMI email, reflecting TTEMI's
14 undisclosed efforts to obtain government construction contract work with TriEco. In that email
15 (Tab S), with the subject "Alabama is a go," defendant Teel describes the need to quickly form a
16 joint venture with TriEco in order to win the Alabama construction project: "Call me as soon as
17 we hear something...I would like to make sure we have some kind of paper in place, even if it is
18 a letter of intent. I want to make sure that we can get a job number open and that we have the
19 right set up with Tri-Eco." He then put an exclamation point on TTEMI's efforts to compete
20 against its protégé and joint venturer Sullivan, saying: "**F[uck]... Sullivan on the construction
21 stuff!**" (Emphasis added.)

22 b. A December, 2005 internal TTEMI email exchange about a
23 government contract opportunity, described as "right up our alley" by TTEMI personnel
24 inquiring whether TTEMI would bid the project with Sullivan. However, in that internal email
25 (Tab T), TTEMI decided it would "rather look at something like this with St. George Chadeaux"
26 instead of its protégé and joint venturer Sullivan.

27 c. An March 23, 2006 internal TTEMI email (Tab U), reflecting
28 TTEMI's undisclosed decision to place defendant Fetters in charge of Chadux, as its CEO or

1 GM. According to that email exchange between defendants Wanta and Fetters, Fetters would
2 soon be acting as the CEO of another small business, "where we can work on good projects
3 moving forward." A short time later, Fetters began acting as the President of Chadux.

4 d. When Fetters began acting as the President of Chadux, he did so in
5 concert and for the benefit of TTEMI. Thus, although he was nominally required to devote
6 100% of his efforts to the business of Chadux, and while he spent substantial time using Chadux
7 to assist TTEMI in competing against TTEMI's protégé Sullivan, Fetters also simultaneously
8 worked on Sullivan projects, and billed TTEMI for this time using TTEMI purchase orders to
9 Chadux.

10 e. Defendant Fetters attempted to conceal TTEMI's effective control
11 of Chadux. Thus, when competing against Sullivan in an attempt to win government contract
12 business from the VA, Fetters represented to the government contracting officer for the VA, in
13 an email attached as Tab V, that Sullivan was about "to graduate" from its mentor-protégé
14 program with TTEMI, which was false. Fetters also stated that he was serving as Chadux's
15 President as part of an "executive sharing SBA program" between TTEMI and Chadux. There is
16 and was no such thing as an "executive-sharing SBA program," but Fetters employed this ruse to
17 deflect suspicion away from the fact that Chadux was being used by TTEMI to compete against
18 its protégé Sullivan, and that Chadux was effectively controlled and operated by TTEMI,
19 through its executive Fetters.

20 85. In addition, in the September 21, 2006 meeting, Batrack promised
21 Sullivan that TTEMI would make only positive statements about Sullivan, in order to promote
22 Sullivan to government agencies and enhance Sullivan's ability to obtain government contracts.
23 On information and belief, Batrack had no intent to perform this promise, or for TTEMI to
24 perform this promise, because TTEMI had actually already made the decision to compete against
25 Sullivan, and was actively doing so, at the time Batrack gave his false assurances to Sullivan.

26 86. On information and belief, Batrack made the promises and representations
27 to Sullivan detailed in paragraphs 83-85 above, knowing they were false, and with the intent to
28

1 deceive Sullivan into giving up significant and substantial rights and revenues, which Sullivan
2 did.

3 87. Sullivan justifiably relied on the assurance by Batrack that TTEMI had no
4 other mentor-protégé relationships, on the promise that TTEMI would pursue additional EPA
5 contract opportunities with Sullivan, and on the promise that TTEMI would make only positive
6 statements about Sullivan. In reliance on Batrack's representations and promises, Sullivan
7 agreed to and did the following:

- 8 a. Went forward with a bid on the \$50 million Navy
9 CERCLA/RCRA contract, unaware that TTEMI was bidding on the same contract with Chadux;
- 10 b. Gave up its 30% position on the \$250 million Navy teaming
11 agreement, thereby losing \$75 million in potential revenues;
- 12 c. Cancelled a \$2 million VA Direct Award project in Loma Linda,
13 CA, in order to accede to TTEMI's request to get a release of the bond that TTEMI had procured
14 for that project;
- 15 d. Invested significant time, energy and money attempting to win
16 Department of Energy contracts with TTEMI, unaware that TTEMI had no intention to pursue or
17 perform such contracts if they had been awarded;
- 18 e. Sacrificed the opportunity to form a relationship with another
19 mentor.

20 88. Had Sullivan been aware of the true facts, which were concealed and
21 misrepresented by Batrack on behalf of Tetra Tech and TTEMI, Sullivan would not have taken
22 any of the actions described in paragraph 87, above.

23 89. In November, 2006, as a result of the stress brought about by the
24 defendants' wrongful conduct toward him and the injuries they inflicted on his company, Mr.
25 Sullivan was hospitalized with a life-threatening, stress-related heart condition. While
26 hospitalized, Mr. Sullivan suffered congestive heart failure and nearly died.

27 90. In or around December of 2006, while Mr. Sullivan remained hospitalized,
28 Sullivan learned that TTEMI and Chadux had won the CERCLA/RCRA Contract as an SBA

1 Mentor-Protégé joint venture. Sullivan immediately protested the award. TTEMI sought and
2 received advice and assistance from SBA personnel in defeating Sullivan's protest, and TTEMI
3 and SBA personnel worked together to ensure that Sullivan's protest was denied..

4 91. Ironically, even after Sullivan learned that TTEMI had formed the new
5 illegal mentor-protégé relationship with Chadux, TTEMI demanded that Sullivan continue its
6 mentor-protégé relationship with Sullivan. On information and belief, TTEMI did so in order to
7 prevent Sullivan from pursuing a new mentor-protégé relationship with a TTEMI competitor,
8 and to prevent Sullivan from using its knowledge, experience and relationships to compete in a
9 new relationship. Indeed, when it had renewed its mentor-protégé relationship with Sullivan in
10 early 2006, thereby putting itself in a position of using Sullivan to qualify as a small business and
11 precluding Sullivan from competing against TTEMI, TTEMI's Vice President Ed Bernstein
12 stressed to defendant Fetters that "[s]omeone needs to keep Steve Sullivan under control." This
13 statement is contained in an internal TTEMI email attached hereto as Tab W.

14 92. While insisting that Sullivan remain in its mentor-protégé relationship
15 with TTEMI, TTEMI secretly continued and continues to attempt to cripple Sullivan's business
16 and disrupt its contractual and prospective economic relationships with government agencies.
17 As part of that effort, in or about April of 2008, defendant Sussenguth, on behalf of TTEMI,
18 made false and defamatory statements about Sullivan to Steve Linder at the EPA, to the effect
19 that Sullivan was not financially solvent, and that there were significant risks in using Sullivan
20 for environmental projects. Implicit in Sussenguth's latter statement was the assertion that
21 Sullivan was not competent in its profession.

22 93. Sussenguth's statements, evidenced in the email attached as Tab X, were
23 false and defamatory. In truth, Sullivan is financially solvent, and is highly competent and
24 capable of performing environmental projects.

25 94. Sussenguth also stated to the EPA that TTEMI would be reluctant to work
26 with Sullivan on any contract with the EPA. That statement was true, but is contrary to the
27 representations made to Sullivan by defendant Batrack on September 21, 2006, and the
28 obligations owed to Sullivan under the SBA Mentor-Protégé Agreement.

1 95. On information and belief, Sussenguth and other TTEMI personnel have
 2 made similarly false and defamatory statements about Sullivan, and have requested government
 3 agencies to repeatedly audit Sullivan, based on TTEMI's false accusations and innuendo. These
 4 statements have had the effect of significantly damaging Sullivan's reputation among
 5 government agencies and in the industry.

6 96. In or about November 2007, TTEMI's executive Roger Argus was
 7 discussing the TTEMI promissory notes to Sullivan, and Argus was asked what actions TTEMI
 8 would take if Sullivan suspended payment on those notes. Argus stated that the timing was not
 9 right for TTEMI to take aggressive action against Sullivan, but that when the right moment
 10 came, TTEMI would use its full power against Sullivan. At or about this time, after TTEMI and
 11 the other defendants had inflicted significant damage on Sullivan through the conduct alleged
 12 herein, defendant Fetters contacted Sullivan as the President of Chadux, and offered to purchase
 13 Sullivan for substantially less than the most recent valuation of Sullivan. When he discussed that
 14 proposal, dated November 12, 2007 and attached at Tab Y, Fetters stated that he knew that
 15 Sullivan was in dire financial condition and that the owners should sell before going bankrupt.

16 97. On information and belief, when defendant Fetters contacted Sullivan with
 17 a low-ball offer to buy Sullivan, Fetters was still acting on TTEMI's behalf, in direct contact
 18 with TTEMI, as part of TTEMI's unlawful scheme to use Chadux to obtain government
 19 contracts through bogus relationships with small businesses. On information and belief, Sullivan
 20 further alleges that when making his low-ball offer to buy Sullivan, Fetters was acting pursuant
 21 to the concerted plan of action conceived and described in writing within TTEMI roughly two
 22 years earlier, called the "Fetter's Model."

23 **First Cause of Action**

24 **Unfair Competition**

25 ***(By Sullivan Against All Defendants)***

26 98. Plaintiff hereby incorporates each preceding allegation as though set forth
 27 in full herein.

1 99. By perpetrating the conduct alleged herein, defendants engaged, and
2 continue to engage, in a series of business practices which are unlawful, unfair, and fraudulent,
3 in violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq.

4 100. By perpetrating the conduct alleged herein, defendants acted unlawfully
5 by, among other things:

6 a. Competing against Sullivan using multiple 8(a) small business
7 protégé firms, in violation of 13 C.F.R. § 124.520(b);

8 b. Procuring and performing 8(a) and small business set aside
9 government contracts with shell companies controlled by TTEMI, and by performing a vast
10 majority of the work and reaping the vast majority of the revenues under those contracts, in
11 violation of 13 C.F.R. §§ 124.510, 124.513, 124.520 and 125.6;

12 c. Using Chadux and TriEco in joint ventures, where TTEMI
13 received the vast majority of revenues and net profits, and where Chadux and TriEco brought
14 little, if anything, to the joint venture relationships other than its 8(a) status, which is prohibited
15 by 13 C.F.R. §§ 124.513(a)(2) and 124.520(e)(2).

16 101. By perpetrating the conduct alleged herein, defendants acted unfairly, with
17 the purpose and effect of restraining competition for government contracts by legitimate small
18 businesses and other large business mentors.

19 102. By perpetrating the conduct alleged herein, defendants acted fraudulently
20 by, among other things:

21 a. Concealing project cost information on the VA Direct Award
22 projects, knowing that Sullivan would encounter cash flow difficulties which would force
23 Sullivan to turn over the projects to TTEMI.

24 b. Concealing the nature and extent of TTEMI's mentor-protégé
25 relationships with other firms;

26 c. Affirmatively misrepresenting to Sullivan that TTEMI would
27 complete the VA Direct Award projects within the cost amounts presented to Sullivan, inducing
28 Sullivan to enter into a series of Construction Management Agreements;

d. Concealing Fetters' self-dealing and skimming of VA Direct Award project funds, through his compensation from Heritage Global;

e. Concealing Defendants' decision to discontinue government contracting efforts with Sullivan;

f. Affirmatively misrepresenting to Sullivan in September, 2006 that its only mentor-protégé relationship was with Sullivan;

g. Affirmatively misrepresenting to Sullivan in September, 2006 that TTEMI would pursue at least four EPA contract opportunities with Sullivan;

h. Affirmatively misrepresenting to Sullivan in September, 2006 that TTEMI would make only positive statements about Sullivan, in order to promote Sullivan to government agencies;

i. Concealing Defendants' efforts to obtain financing for Chadux from Homes Systems of America in order to help Chadux and TTEMI win the CERCLA/RCRA contract;

j. Concealing Defendants' true objective of making small business government contractors pass-through agents for TTEMI to obtain government contracts it would not otherwise obtain.

103. Sullivan was damaged by defendants' unlawful, unfair and fraudulent acts, in that Sullivan paid significant monies to TTEMI and its agents in the form of VA Direct Award contract revenues and project costs, interest on predatory loans made to Sullivan by TTEMI, and in that Sullivan conveyed significant interests in government contracts to TTEMI.

Second Cause of Action

Intentional Interference with Economic Advantage

(By Sullivan Against All Defendants)

104. Plaintiff hereby incorporates each preceding allegation as though set forth in full herein.

105. At all relevant times, Sullivan had relationships with the probability of future economic benefits, including without limitation the plaintiff's relationships with the U.S. Navy, the EPA, the VA, and other government agencies.

106. At all relevant times, defendants knew of plaintiff's relationships.

107. Defendants engaged in a course of wrongful conduct, by which they intentionally disrupted and interfered with plaintiff's relationships. These acts of wrongful conduct included denying Sullivan access to joint clients, making false and defamatory statements about Sullivan, intentionally concealing project cost information to inflict and exacerbate financial hardship on Sullivan, fraudulently inducing Sullivan to relinquish contract positions and contract revenues, and requesting frequent government audits of Sullivan's financial condition in order to harass Sullivan, distract its management and drain its resources.

108. At all relevant times, defendants intended to disrupt plaintiff's economic relationships.

109. As a proximate result of defendants' acts, Sullivan's economic relationships with the Navy, VA, and EPA were disrupted, and Sullivan has lost significant revenues and incurred significant expenses attempting to deal with the disruption and damage to those relationships.

110. In perpetrating the wrongful conduct alleged herein, defendants acted with malice, fraud and oppression, thereby justifying an award of punitive damages against them.

Third Cause of Action

Negligent Interference with Prospective Economic Advantage

(By Sullivan Against All Defendants)

111. Plaintiff hereby incorporates each preceding allegation as though set forth in full herein.

112. At all relevant times, Sullivan had relationships with the probability of future economic benefits, including without limitation the plaintiff's relationships with the U.S. Navy, the EPA, the VA, and other government agencies.

113. At all relevant times, defendants knew that plaintiff had relationships with the probability of future economic benefits with the Navy, the EPA, the VA, and other government agencies.

114. Defendants engaged in a course of wrongful conduct, by which they intentionally disrupted and interfered with plaintiff's relationships. Specifically, defendants blocked Sullivan's access to joint clients, made defamatory statements about Sullivan, intentionally concealed project cost information to inflict and exacerbate financial hardship on Sullivan, and requested frequent government audits of Sullivan's financial condition in order to distract Sullivan's management and drain its resources.

115. At all relevant times, defendants intended to disrupt plaintiff's economic relationships.

116. As a proximate result of defendants' acts, Sullivan's economic relationships with the Navy, VA, and EPA were disrupted, and Sullivan has lost significant revenues and incurred significant expenses attempting to deal with the disruption and damage to those relationships.

Fourth Cause of Action

Intentional Interference with Contractual Relations

(By Sullivan Against All Defendants)

117. Plaintiff hereby incorporates each preceding allegation as though set forth in full herein.

118. At all relevant times, plaintiff had contracts with the government agencies, including the U.S. Navy, EPA, and the VA.

119. Defendants knew of plaintiff's contracts.

120. In perpetrating the conduct alleged herein, defendants intentionally disrupted and interfered with Sullivan's contractual relationships.

121. As a proximate result of defendants' wrongful acts of interference, Sullivan's contractual relationships have been breached or disrupted, such that performance of those contracts by Sullivan has been made more costly and burdensome.

122. As a proximate result of defendant's wrongful acts of interference, plaintiff has suffered damage, in an amount to be proven at trial.

123. In perpetrating the wrongful conduct alleged herein, defendants acted with malice, fraud and oppression, thereby justifying an award of punitive damages against them.

Fifth Cause of Action

Fraud

(By Mr. Sullivan and Sullivan Against All Defendants)

124. Plaintiffs hereby incorporate each preceding allegation as though set forth in full herein.

125. As alleged more particularly herein, defendants made numerous misrepresentations to plaintiffs, knowing they were false, including the following:

a. That other than Sullivan, TTEMI had no other mentor-protégé relationships (in truth, TTEMI had numerous other mentor-protégé relationships, which it was using to compete against Sullivan);

b. That TTEMI would pursue at least four EPA contract opportunities with Sullivan (in truth, TTEMI had decided to stop pursuing contract opportunities with Sullivan, in favor of its other, undisclosed protégé business partners)

c. That TTEMI would make only positive statements about Sullivan, in order to promote Sullivan to government agencies and enhance Sullivan's ability to obtain government contracts (in truth, TTEMI was making, and intended to and did continue to make false, defamatory, and disparaging statements about Sullivan, and requested government agencies to repeatedly audit Sullivan as a tool of harassment);

d. That TTEMI would complete the VA Direct Award projects within the cost amounts presented at the time Sullivan was induced to enter the Construction Management Agreements (in truth, TTEMI fully expected and intended for the project costs to exceed these amounts, at Sullivan's expense).

126. In making these misrepresentations, defendants intended to, and did, induce plaintiffs to rely on them, which reliance was justified.

127. As a proximate result of defendants' misrepresentations, plaintiffs suffered damages in an amount to be proven at trial.

128. In perpetrating the wrongful conduct alleged herein, defendants acted with malice, fraud and oppression, thereby justifying an award of punitive damages against them.

Sixth Cause of Action

Concealment

(By Mr. Sullivan and Sullivan Against All Defendants)

129. Plaintiffs hereby incorporate each preceding allegation as though set forth in full herein.

130. From 2001 through 2006, defendants concealed from plaintiffs a number of material facts, including:

a. Defendants' true objective of abusing small business government contracting programs, by making them pass-through agents for TTEMI to obtain government contracts it would otherwise not obtain;

b. Defendants' conclusion that costs on the VA Direct Projects would exceed revenues, and subject Sullivan to serious financial hardship;

c. Defendants' formation of mentor-protégé relationships with businesses in direct competition with Sullivan;

d. Defendants' efforts to obtain financing for Chadux from Homes Systems of America, in order to help Chadux and TTEMI win the CERCLA/RCRA contract;

e. Defendants' decision to discontinue government contracting efforts with Sullivan;

f. Fetters' self-dealing and skimming of VA Direct Award project funds, through his compensation from Heritage Global.

131. At all relevant times, because TTEMI and Sullivan were in a mentor-protégé relationship, and because they were joint venturers, and because of their confidential relationship of trust and confidence, defendants owed a duty to disclose all material facts to plaintiffs, including those facts identified in paragraph 130, above.

132. Defendants concealed the facts identified in paragraph 130, above, with the intent to deceive plaintiffs.

133. Plaintiffs were unaware of the true facts concealed from it by defendants, and would not have acted as they did had they been aware of the true facts.

134. As a proximate result of defendants' concealment, plaintiffs suffered damages, in an amount to be proven at trial.

135. In perpetrating the wrongful conduct alleged herein, defendants acted with malice, fraud and oppression, thereby justifying an award of punitive damages against them.

Seventh Cause of Action

Negligent Misrepresentation

(By Mr. Sullivan and Sullivan Against All Defendants)

136. Plaintiffs hereby incorporate each preceding allegation as though set forth in full herein.

137. As alleged more particularly herein, defendants made numerous misrepresentations to plaintiffs, without regard to the truth of those facts, including the following:

a. That other than Sullivan, TTEMI had no other mentor-protégé relationships (in truth, TTEMI had numerous other mentor-protégé relationships, which it was using to compete against Sullivan);

b. That TTEMI would pursue at least four EPA contract opportunities with Sullivan (in truth, TTEMI had decided to stop pursuing contract opportunities with Sullivan, in favor of its other, undisclosed protégé business partners)

c. That TTEMI would make only positive statements about Sullivan, in order to promote Sullivan to government agencies and enhance Sullivan's ability to obtain government contracts (in truth, TTEMI was making, and intended to and did continue to make false, defamatory, and disparaging statements about Sullivan, and requested government agencies to repeatedly audit Sullivan as a tool of harassment);

1 d. That TTEMI would complete the VA Direct Award projects within
 2 the cost amounts presented at the time Sullivan was induced to enter the Construction
 3 Management Agreements (in truth, TTEMI fully expected and intended for the project costs to
 4 exceed these amounts, at Sullivan's expense).

5 138. In making these misrepresentations, defendants intended to, and did,
 6 induce plaintiffs to rely on them, which reliance was justified.

7 139. As a proximate result of defendants' misrepresentations, Sullivan suffered
 8 damages in an amount to be proven at trial.

9 **Eighth Cause of Action**

10 **Breach of Contract**

11 ***(By Sullivan Against TTEMI)***

12 140. Plaintiff hereby incorporates each preceding allegation as though set forth
 13 in full herein.

14 141. Sullivan and TTEMI are parties to the SBA Mentor-Protégé Agreement.

15 142. In the SBA Mentor-Protégé Agreement, TTEMI agreed to assist Sullivan
 16 by: facilitating Sullivan's interaction with federal agencies; assisting Sullivan in preparing
 17 contract bids, joint venturing with Sullivan to pursue government contracts; developing
 18 Sullivan's quality assurance and quality control methods to meet federal agency standards;
 19 evaluating Sullivan's contract bids and training Sullivan in cost estimating and bid preparation;
 20 preparing and reviewing Sullivan's contract bids, guiding Sullivan on money management and
 21 financial reporting; providing work and training to expand Sullivan's capabilities in project
 22 management; and, training Sullivan in the use of cost controls and proper sequence of project
 23 tasks.

24 143. In the SBA Mentor-Protégé Agreement, TTEMI warranted that it had the
 25 capability, experience and means required to carry out the services promised therein, and it
 26 agreed to provide those services in a diligent and workmanlike manner consistent with
 27 professional practices and standards for nationally recognized firms engaged in similar work.
 28

1 144. In the SBA Mentor-Protégé Agreement, TTEMI agreed to protect
2 proprietary information provided to it by Sullivan, and to restrict access to Sullivan's proprietary
3 information to those individuals directly participating in providing assistance to Sullivan under
4 the SBA Mentor-Protégé Agreement.

5 145. Sullivan performed all of its obligations under the SBA Mentor-Protégé
6 Agreement, except to the extent those obligations were discharged as a result of TTEMI's
7 breaches.

8 146. TTEMI materially breached the SBA Mentor-Protégé Agreement, by
9 refusing Sullivan to interact with federal agencies; failing to effectively assist Sullivan in
10 preparing contract bids; failing to develop Sullivan's quality assurance and quality control
11 methods to meet federal agency standards; failing to evaluate Sullivan's contract bids or training
12 Sullivan in cost estimating and bid preparation; failing to competently review Sullivan's
13 contract bids; failing to guide Sullivan on money management and financial reporting; failing to
14 provide work and training to expand Sullivan's capabilities in project management; and, failing
15 to train Sullivan in the use of cost controls and proper sequence of project tasks.

16 147. TTEMI breached its warranty in the SBA Mentor-Protégé Agreement,
17 because it lacked the capability, experience and means required to carry out the services
18 promised in therein.

19 148. TTEMI materially breached its promise to provide services under the SBA
20 Mentor-Protégé Agreement, by failing and refusing to provide those services in a diligent and
21 workmanlike manner consistent with professional practices and standards for nationally
22 recognized firms engaged in similar work.

23 149. TTEMI materially breached its obligation under the SBA Mentor-Protégé
24 Agreement to protect Sullivan's proprietary information, by providing that information to
25 Heritage Global, Chadux, and other parties in competition with Sullivan.

26 150. At all relevant times, TTEMI owed Sullivan a duty of good faith and fair
27 dealing.

1 151. By engaging in the conduct alleged herein, TTEMI breached the implied
2 covenant of good faith and fair dealing.

3 152. As a proximate result of TTEMI's material breaches of the SBA Mentor-
4 Protégé Agreement, Sullivan has suffered direct and consequential damages, in an amount to be
5 proven at trial.

6 **Ninth Cause of Action**

7 **Defamation**

8 *(By Sullivan Against Defendants Sussenguth and TTEMI)*

9 153. Plaintiff hereby incorporates each preceding allegation as though set forth
10 in full herein.

11 154. Within the last year, defendant Sussenguth, on behalf of TTEMI, made
12 false and defamatory statements about Sullivan, as evidenced in the email attached hereto at Tab
13 Z.

14 155. The statements were of a defamatory nature in that they impugned
15 Sullivan's reputation as a sound, high quality government contractor.

16 156. As a proximate result of the defamatory statements by Sussenguth and
17 TTEMI, Sullivan has lost two significant government contracts, one from EPA Region 9 (where
18 defendant Sussenguth worked for TTEMI) and one for EPA Region 4, and has suffered damage
19 to its reputation.

20 157. In perpetrating the wrongful conduct alleged herein, defendants acted with
21 malice, fraud and oppression, thereby justifying an award of punitive damages against them.

22 **Tenth Cause of Action**

23 **Breach of Fiduciary Duty**

24 *(By Sullivan Against TTEMI)*

25 158. Plaintiff hereby incorporates each preceding allegation as though set forth
26 in full herein.

27 159. By virtue of its status and duties under the DoD and SBA Mentor-Protégé
28 Agreements, and as a joint venturer with Sullivan, TTEMI owed Sullivan fiduciary duties,

1 including the duty of undivided loyalty, which obligated TTEMI to act with the utmost good
2 faith and in the best interests of Sullivan.

3 160. By engaging in the conduct alleged herein, TTEMI breached its fiduciary
4 duties to Sullivan.

5 161. As a proximate result of TTEMI's breaches of its fiduciary duties, Sullivan
6 suffered damages, in an amount to be proven at trial.

7 162. In perpetrating the wrongful conduct alleged herein, defendants acted with
8 malice, fraud and oppression, thereby justifying an award of punitive damages against them.

9 Eleventh Cause of Action

10 **Intentional Infliction of Emotional Distress**

11 *(By Mr. Sullivan Against TTEMI, Wanta, Fetter, and Batrack)*

12 163. Plaintiff hereby incorporates each preceding allegation as though set forth
13 in full herein.

14 164. By perpetrating the wrongful conduct alleged herein, defendants acted in
15 an outrageous manner beyond all bounds of decency, intending to cause emotional distress or
16 with reckless disregard of the probability that Mr. Sullivan would suffer emotional distress.

17 165. As alleged more particularly herein, defendants acted in an outrageous
18 manner in an attempt to destroy Sullivan, a small business built from scratch by Mr. Sullivan, a
19 service-disabled veteran of the U.S. Navy. Defendants planned to and did appropriate contract
20 benefits and revenues from Sullivan, by driving it into financial distress. Then, knowing of the
21 damage they had caused, defendants attempted to purchase Sullivan at a deep discount, using a
22 sham small business protégé as their vehicle for doing so, pursuant to TTEMI's "Fetter's
23 Model," conceived and announced internally at TTEMI years earlier.

24 166. Defendants' outrageous actions in furtherance of the scheme included the
25 following:

26 a. Before any significant construction on the VA Direct Award
27 projects had taken place, TTEMI determined that Sullivan would lose significant money on these
28 projects. Defendants concealed this information from Sullivan in order to create financial

1 hardship for Sullivan, which defendants then exploited for their own gain.

2 b. On information and belief, in its communications to the VA,
3 TTEMI made false and defamatory statements about Sullivan and its competence and integrity,
4 in order to boost TTEMI's own reputation and to damage Sullivan's reputation with an important
5 source of Sullivan's government contracts.

6 c. In a September 21, 2006 telephonic meeting with Mr. Sullivan,
7 defendant Batrack, the Chief Executive Officer of Tetra Tech, promised Sullivan that TTEMI
8 would pursue at least four EPA contract opportunities with Sullivan, when in truth, TTEMI had
9 already determined not to pursue government contract opportunities with Sullivan.

10 d. In the September 21, 2006 meeting, Batrack also promised Mr.
11 Sullivan that TTEMI would make only positive statements about Sullivan, in order to promote
12 Sullivan to government agencies and enhance Sullivan's ability to obtain government contracts.
13 On information and belief, Batrack had no intent to perform this promise, or for TTEMI to
14 perform this promise, because TTEMI had already made the decision to compete against
15 Sullivan, and was already actively doing so.

16 e. Even while insisting that Sullivan remain in its mentor-protégé
17 relationship with TTEMI, TTEMI secretly continued and continues to attempt to cripple
18 Sullivan's business and disrupt its contractual and prospective economic relationships with
19 government agencies.

20 f. In or around October 2007, defendant Feters contacted Sullivan as
21 the President of Chadux, and offered to purchase Sullivan for substantially less than the most
22 recent valuation of Sullivan. In that proposal, Feters stated that he knew that Sullivan was in
23 dire financial condition and that the owners should sell before going bankrupt. On information
24 and belief, when defendant Feters contacted Sullivan with a low-ball offer to buy Sullivan,
25 Feters was still acting on TTEMI's behalf, in direct contact with TTEMI, as part of TTEMI's
26 unlawful scheme to use Chadux to obtain government contracts through bogus relationships with
27 small businesses.

1 167. At all relevant times herein, defendants' wrongful and outrageous conduct
2 was directed primarily at, or occurred in the presence of, Mr. Sullivan.

3 168. As a proximate result of defendants' wrongful conduct, Mr. Sullivan
4 suffered severe, substantial, and enduring emotional distress.

5 169. In perpetrating the wrongful conduct alleged herein, defendants acted with
6 malice, fraud and oppression, thereby justifying an award of punitive damages against them.

7 **WHEREFORE**, plaintiffs prays for judgment as follows:

- 8 a. For compensatory damages according to proof;
9 b. For punitive damages;
10 c. For prejudgment interest at the maximum legal rate;
11 d. For attorneys' fees and costs;
12 e. For a preliminary and permanent injunction restraining defendants'
13 acts of unfair competition and wrongful interference, and restraining defendants from soliciting,
14 obtaining, or performing government contracts through the unlawful, unfair and fraudulent
15 means alleged herein;
16 f. For restitution of defendants' ill-gotten gains;
17 g. For any other relief as the court may deem appropriate and just.

18
19 Respectfully submitted,

20 Dated: July 8, 2008

LATHAM & WATKINS LLP

21
22
23 By: 

Kenneth M. Fitzgerald
Christopher A. Rheinheimer
Attorneys for Plaintiff
SULLIVAN INTERNATIONAL GROUP,
INC.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: July 8, 2008

LATHAM & WATKINS LLP

By: 

Kenneth M. Fitzgerald
Christopher A. Rheinheimer
Attorneys for Plaintiff
SULLIVAN INTERNATIONAL GROUP,
INC.

1 LATHAM & WATKINS LLP
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2 Christopher A. Rheinheimer (Bar. No. 253890)
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3 San Diego, California 92101-3375
Telephone: (619) 236-1234
4 Facsimile: (619) 696-7419

5 Attorneys for Plaintiffs Steven Sullivan and
Sullivan International Group, Inc.
6
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO**

10 STEVEN SULLIVAN, an individual;
SULLIVAN INTERNATIONAL GROUP,
11 INC., a California corporation;

12 Plaintiff,

13 v.

14 TETRA TECH, INC., a Delaware
corporation; TETRA TECH EMI, INC., a
15 Delaware corporation; JOHN TEEL, an
individual; DANIEL BATRACK, an
16 individual; RANDY FETTERS, an
individual; MARK WALSH, an individual;
17 MICHAEL WANTA, an individual;
EDWARD SUSSENGUTH, an individual,
18 and DOES 1-50, inclusive,

19 Defendants.
20

Case Number: 37-2008-00084804-CU-BT-CTL

**DECLARATION OF SERVICE AS TO
DEFENDANTS TETRA TECH, INC.,
TETRA TECH EMI, INC., DANIEL
BATRACK, MICHAEL WANTA, AND
EDWARD SUSSENGUTH**

21 **DECLARATION OF SERVICE**

22 I am a resident of the State of California, over the age of eighteen years, and not a party
23 to the within action. My business address is Latham & Watkins, 600 W. Broadway, Suite 1800,
24 San Diego, California 92101 (619) 236-1234.

25 On July 8, 2008, I served a copy of the following document(s):

26 **SUMMONS ON FIRST AMENDED COMPLAINT;**
27 **FIRST AMENDED COMPLAINT FOR UNFAIR COMPETITION;**
28 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC
ADVANTAGE; NEGLIGENT INTERFERENCE WITH PROSPECTIVE**

1 **ECONOMIC ADVANTAGE; INTENTIONAL INTERFERENCE WITH**
2 **CONTRACTUAL RELATIONS; FRAUD; CONCEALMENT;**
3 **NEGLIGENT MISREPRESENTATION; BREACH OF CONTRACT;**
4 **DEFAMATION; BREACH OF FIDUCIARY DUTY; INTENTIONAL**
5 **INFLICTION OF EMOTIONAL DISTRESS;**

6 **NOTICE OF CASE ASSIGNMENT;**

7 **ADR PACKET**

8 **Party Served**

9 Defendants TETRA TECH, INC., TETRA TECH EMI, INC., DANIEL BATRACK,
10 MICHAEL WANTA, and EDWARD SUSSENGUTH

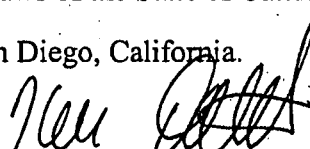
11 **Person(s) Served**

12 Holly Roth
13 McDermott Will & Emery LLP
14 600 13th Street N.W.
15 Washington, D.C. 20005
16 HRoth@mwe.com

17 **By delivering copies to the person(s) served, as follows:**

18 Pursuant to agreement with opposing counsel, I caused the above-referenced documents
19 to be converted in digital format (.pdf) and served by electronic mail to the addressee at the
20 addresses listed above.

21 I declare under penalty of perjury according to the laws of the State of California that the
22 above is true and correct. Executed on July 10, 2008 at San Diego, California.

23
24
25
26
27
28

Kenneth M. Fitzgerald

1 LATHAM & WATKINS LLP
Kenneth M. Fitzgerald (Bar. No. 142505)
2 Christopher A. Rheinheimer (Bar. No. 253890)
600 West Broadway, Suite 1800
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4 Facsimile: (619) 696-7419

5 Attorneys for Plaintiffs Steven Sullivan and
Sullivan International Group, Inc.
6

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**

10 STEVEN SULLIVAN, an individual;
SULLIVAN INTERNATIONAL GROUP,
11 INC., a California corporation;

12 Plaintiff,

13 v.

14 TETRA TECH, INC., et al.

15 Defendants.
16
17

Case Number: 37-2008-00084804-CU-BT-CTL

DECLARATION OF SERVICE

18 I am a resident of the State of California, over the age of eighteen years, and not a
19 party to the within action. My business address is Latham & Watkins, 600 West Broadway,
20 Suite 1800, San Diego, California 92101. On July 10, 2008, I served the within document(s):
21

22 **DECLARATION OF SERVICE AS TO DEFENDANTS TETRA TECH,**
INC., TETRA TECH EMI, INC., DANIEL BATRACK, MICHAEL
23 **WANTA, AND EDWARD SUSSENGUTH**



BY REGULAR MAIL (C.C.P. § 1013(a)): I caused the above document(s) to be
25 deposited in the United States mail at San Diego, California, with postage thereon
26 fully prepaid addressed to the party(ies) listed below. I am readily familiar with the
27 firm's practice of collection and processing correspondence for mailing. Such mail
is deposited with the United States Postal Service each day and that practice was
28 followed in the ordinary course of business for the service herein attested to.

☐ **BY FED EX:** I am readily familiar with Latham & Watkins' practice of collection and processing packages for FedEx. Under that practice, the FedEx package would be deposited with FedEx on that same day with billing charges thereon fully prepaid in the ordinary course of business. I placed a sealed envelope or package containing the above document(s) with the Latham & Watkins FedEx pick-up box, or other like facility for pick-up by the regularly scheduled Federal Express for receipt of overnight packages addressed to the party(ies) listed below

☐ **BY PERSONAL SERVICE (C.C.P. § 1011(a)(b)):** I caused [a sealed envelope or package containing] the above document(s) and addressed as set forth below to be personally delivered to the parties listed below and left with a receptionist or other person having charge thereof at the offices of the party(ies) listed below by First Legal Attorney Service [address].

☐ **BY FACSIMILE (C.C.P. § 1013(e)(f)):** I deposited the above document(s) for facsimile transmission in accordance with the office practice of Latham & Watkins for collecting and processing facsimiles. I am familiar with the office practice of Latham & Watkins for collecting, processing, and transmitting facsimiles, which practice is that when a facsimile is deposited with the Latham & Watkins personnel responsible for facsimiles, such facsimile is transmitted that same day in the ordinary course of business. The facsimile of the above document(s) was transmitted to the party(ies) listed below.

☐ **BY E-MAIL:** I caused the above-referenced documents to be converted in digital format (.pdf) and served by electronic mail to the addresses at the addresses listed below.

Holly Roth
McDermott Will & Emery LLP
600 13th Street N.W.
Washington, D.C. 20005
Tel: (202) 756-8396
HRoth@mwe.com

I declare under penalty of perjury according to the laws of the State of California that the above is true and correct. Executed on July 10, 2008, at San Diego, California.


Ginger Calderon

JS 44

(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

STEVEN SULLIVAN, an individual; SULLIVAN INTERNATIONAL GROUP, INC., a California corporation,

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

08 CV 1433 JM LSP

DEFENDANTS

TETRA TECH, INC., a Delaware corporation; TETRA TECH EMI, INC., a Delaware corporation; JOHN TEEL, an individual; DANIEL BATRACK, an individual; RANDY FETTERS, an individual; MARK WANTS, an individual; MICHAEL WANTA, an individual; EDWARD SUSSENGUTH, an individual; and DOBSON, an individual.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE DEPUTY TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Kenneth M. Fitzgerald (Bar No. 142505)
Christopher A. Rheinheimer (Bar No. 253890)
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ATTORNEYS (IF KNOWN)

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Los Angeles, CA 90067-3218 Telephone: 310.277.4110

II. BASIS OF JURISDICTION (PLACE AN 'X' IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PT | DEF | | PT | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

This action involves claims asserted under California state law involving the U.S. Small Business Administration and the U.S. Small Business Act, 15 U.S.C. § 631 et seq. Defendants seek to remove this matter from the Superior Court of the State of California, County of San Diego, pursuant to 28 U.S.C. §§ 1441 and 1446.

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions		

VI. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding
☒ 2 Removal from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 0.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

Docket Number

DATE

SIGNATURE OF ATTORNEY OF RECORD

August 6, 2008

GREGORY R. JONES (State Bar No. 229858)

153752 SAC

::ODMA\PCDOCS\WORDPERFECT\22816\ January 24, 2000 (3:10pm)

\$350 8/7/08

OR

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

153752 - TC

August 07, 2008
10:22:32

Civ Fil Non-Pris

USAO #.: 08CV1433

Judge.: JEFFREY T MILLER

Amount.:

Check#.: BC18345

\$350.00 CK

Total-> \$350.00

FROM: STEVEN SULLIVAN
VS
TETRA TECH